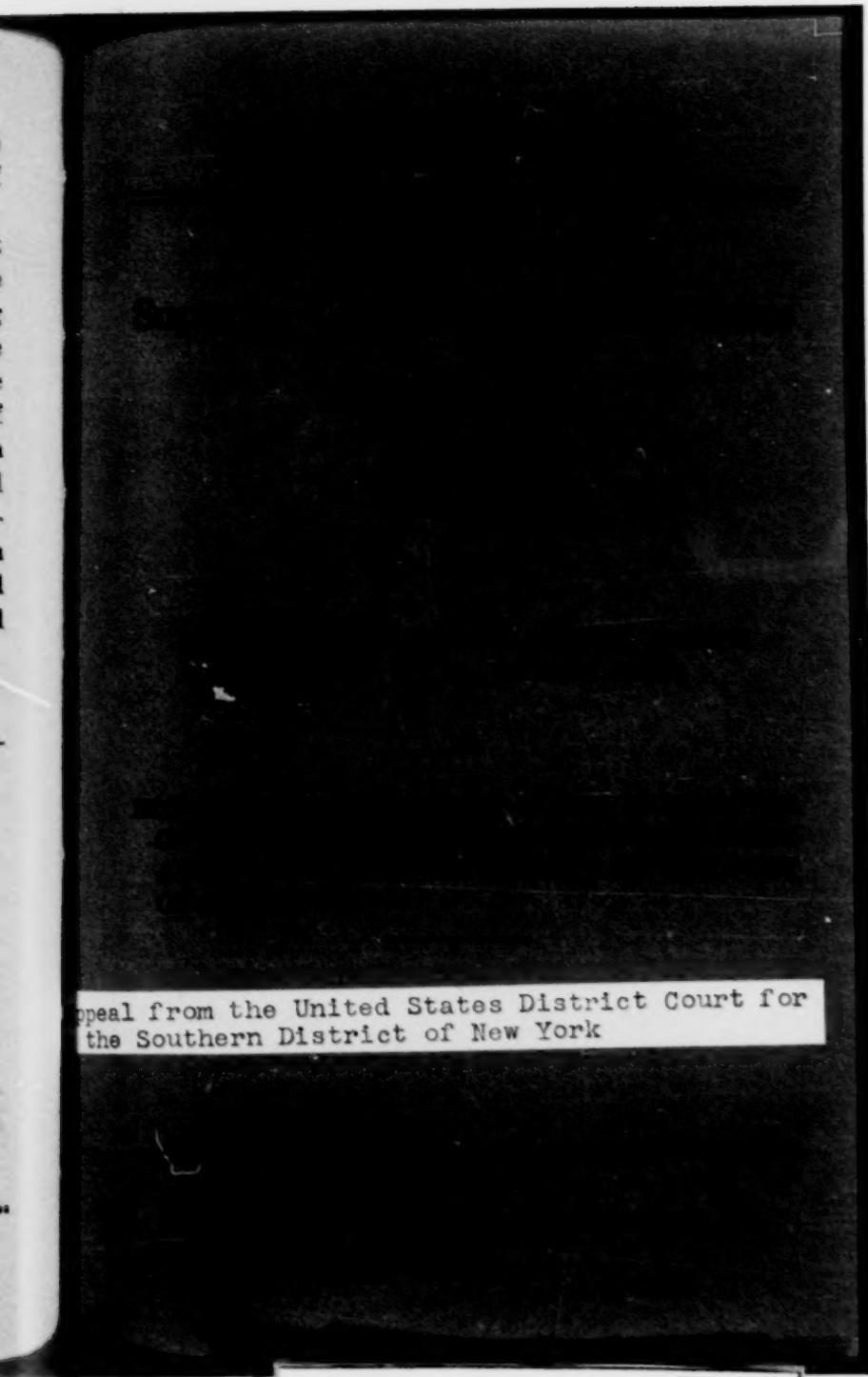

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 549

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, ET AL., APPELLANTS,

vs.

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF THE THIRD DISTRICT OF THE IMMIGRATION AND NATURALIZATION SERVICE OF THE PORT OF NEW YORK

Appeal from the United States District Court for the Southern District of New York

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[fol. 1] [File endorsement omitted]

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL NUKK, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

COMPLAINT—Filed June 2, 1954

Plaintiff, by BLANCH FREEDMAN and GLORIA AGRIN, his attorneys, complaining against the defendant, alleges:

First: The defendant is the District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, which embraces the judicial district of the Southern District of New York, and as such he is the agent and representative, in the said immigration district, of the Attorney General of the United States and the Commissioner of Immigration and Naturalization, and is the highest official in charge of the said Service in the said immigration district.

Second: The defendant is duly authorized in his said official capacity to carry into effect, in the said immigration district, the provisions of the Immigration and Nationality Act of 1952, the rules and regulations promulgated thereunder, and to effectuate the directives and orders of the Attorney General of the United States and of the Commissioner of Immigration and Naturalization.

Third: The Immigration and Nationality Act of 1952 in Section 242(d) thereof [8 U.S.C. § 1252(d)] provides:

> "Any alien, against whom a final order of deportation as defined in subsection (c) heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions

[fol. 2] which will require any alien subject to s pervision (1) to appear from time to time before ai immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction be guilty of a felony, and shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both."

Fourth: The rule and regulation promulgated in pursuance of the above-stated provision of the Immigration and Nationality Act, Section 242.3(c) of the Immigration and Nationality Regulations [8 C.F.R. § 242.3(c)] provides:

"An alien against whom an order of deportation has been outstanding for more than six months shall, pending deportation, be placed under supervision by the district director, district enforcement officer, or officer in charge having administrative jurisdiction over the office in which the detention or release of such alien was authorized. An alien placed under supervision pursuant to this paragraph shall be advised of the penal provisions of section 242(d) of the Immigration and Nationality Act. Aliens placed under such supervision shall, among other things, be required to:

(1) Appear from time to time at specified times or intervals before an officer of the Service for identification;

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(2) Submit, if necessary, to medical and psychiatric examination at government expense;

(3 Give information under oath as to his nationality, circumstances, habits, associations and activities, and other information whether or not related to the foregoing as may be deemed fit and proper; and

(4) Conform to such reasonable written restrictions on his conduct or activities as may be prescribed."

Fifth: A final administrative order of deportation was made and entered against the plaintiff on the 8th day of December 1952 and has been outstanding for more than six months.

[fol. 3] Sixth: On or about the 29th day of April, 1954, the defendant, in alleged pursuance of the aforesaid statute and rule, issued an "Order of Supervision" against the plaintiff, [a copy of which is annexed hereto, made a part hereof, and marked "Exhibit A"] imposing upon the plaintiff the following regulations of and restrictions upon his conduct and activity:

"(1) That said alien shall produce himself, at time and place designated, for deportation pursuant to the order of deportation.

(2) That said alien shall upon request produce himself at a time and place designated for the purpose of submitting to medical and psychiatric examination and/or to furnish such information as may be deemed fit and proper.

(3-a) That said alien shall notify the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) hereof of any change in residence or employment, within the immigration district, within 48 hours after change is made.

(3-b) That said alien shall apply to the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) for permission to change place of residence from one immigration district to another, at least 48 hours prior to such change.

(4) That said alien shall report in (PERSON) on — o feach week between 8:45 A. M. and 3:45 P. M. to

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the Officer in Charge of the Immigration and Naturalization Service at Ellis Island, New York Harbor, N. Y.

[The written report shall contain (a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment, (f)]

(5-a) That said alien shall terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary branch, affiliate, or subdivision of any such group or organization.

(5-b) That such alien shall refrain from "associating" with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any [fol. 4] of the activities mentioned in sub-paragraph (a) above, provided that the term "associating" as used in this sub-paragraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies, or activities of any of the organizations or activities mentioned in sub-paragraph (a).

(5-c) That said alien shall not violate Se. 2385 of the "Smith" Act of June 25, 1948 (Section 2385 of Title 18, U. S. Code) and Section 4 of the Internal Security Act of September 23, 1950 (Sec. 783 of Title 50, U. S. Code).

(6) That said alien shall not travel outside a radius of 50 miles from Times Square, New York, N. Y. without written permission of an appropriate officer of the Immigration & Naturalization Service, New York District."

Prior thereto, and in or about April, 1953, the defendant had made his first "Order of Supervision" against the plaintiff, containing substantially similar regulations of and restrictions upon the conduct and activity of the plain-

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tiff, which "Order" was withdrawn on the day and date the extant "Order of Supervision" was made.

[fol. 5] Seventh: Section 242(d) of the Immigration and Nationality Act of 1952, in alleged pursuance of which the aforesaid "Order of Supervision" was made and issued, is, on its face and as applied herein, unconstitutional, invalid, and void, in that:

A)—Said Section denies to plaintiff the equal protection of law, in violation of the Fifth Amendment to the United States Constitution;

B)—Said Section deprives plaintiff of liberty and property without due process of law, in violation of the Fifth Amendment to the United States Constitution;

C)—Said Section unlawfully delegates legislative power to the Attorney General of the United States, his representatives, agents and employees, in violation of Article 1, Section 1 of the Constitution of the United States;

D)—Said Section is vague and indefinite, in violation of the Fifth Amendment to the Constitution of the United States;

E)—Sub-sections (1) and (2) of said Section are vague and indefinite and deprive plaintiff of liberty without due process of law, all in violation of the Fifth Amendment to the United States Constitution;

F)—Sub-section (3) of said Section is so vague and indefinite as to permit the abridgement of plaintiff's right of lawful speech, press, assembly and association, in violation of the First Amendment to the United States Constitution; and to permit compulsion of self-incriminating information in violation of the Fifth Amendment to the Constitution of the United States;

G)—Sub-section (4) of said Section unlawfully delegates legislative power to the Attorney General of the United States, his representatives, agents and employees, in violation of Article 1, Section 1 of the Constitution of the United States.

Eighth: Rule 242.3(c) of the Immigration and Nationality Regulations constitutes a delegation of rule-making

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power to the defendant which is illegal, unwarranted by and in violation of the provisions of Section 242(d) of the Immigration and Nationality Act of 1952.

Ninth: The "Order of Supervision" made and issued in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 is unconstitutional, invalid and void in that:

A)—Said order is an unlawful exercise of legislative power by the Attorney General of the United States, his representatives, agents and employees, in violation of Article 1, Section 1 of the Constitution of the United States;

[fol. 6] B)—Said order bears no reasonable relation to a lawful exercise of the power to deport or to the eventual deportation of the plaintiff;

C)—Said order is harsh and punitive, and imposes punishment upon the plaintiff without judicial process, in violation of the Fifth Amendment to the Constitution of the United States;

D)—Said order imposes punishment upon the plaintiff in violation of the Eighth Amendment to the Constitution of the United States;

E)—Said order and more particularly the regulation and restriction upon the conduct and activity of the plaintiff numbered (2) thereof, is so vague and indefinite as to permit an abridgement of plaintiff's right to free speech, press, assembly and association, in violation of the First Amendment of the United States Constitution; deprives plaintiff of liberty without due process of law, and permits the compulsion of incriminating information all in violation of the Fifth Amendment to the United States Constitution;

F)—Said order and more particularly the regulation and restriction upon the conduct and activity of the plaintiff numbered (3a) thereof, is unauthorized by the statute and further imposes upon plaintiff compliance therewith within a time that is, as a matter of law, unreasonably short;

G)—Said order and more particularly the regulation and restriction upon the conduct and activity of the plaintiff numbered (3b) thereof, is unauthorized

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by the statute; deprives plaintiff of liberty without due process of law, and is so vague and indefinite as to permit deprivation of plaintiff's property without due process of law all in violation of the Fifth Amendment to the United States Constitution;

H)—Said order and more particularly the regulation and restriction upon the conduct and activity of the plaintiff numbered (4) thereof, deprives plaintiff of liberty and property without due process of law, in violation of the Fifth Amendment to the United States Constitution;

I)—Said order and more particularly the regulation and restriction upon the conduct and activity of the plaintiff numbered (6) thereof, is unauthorized by statute; deprives plaintiff of liberty and property, and inflicts upon him punishment without due process of law, all in violation of the Fifth and Eighth Amendments to the United States Constitution;

J)—Said order and more particularly the regulation and restriction upon the conduct and activity of the plaintiff numbered (5-a) and (5-b) thereof, abridges plaintiff's freedom of speech, press, assembly and association in violation of the First Amendment to the United States Constitution; and are vague and indefinite in violation of the First and Fifth Amendments to the United States Constitution;

K)—Said order and more particularly the regulation and restriction upon the conduct and activity of the [fol. 7] plaintiff numbered (5-c) thereof, is an unlawful usurpation of legislative power in violation of Article I, Section 1 of the United States Constitution; and subjects plaintiff for the same offense to be twice put in jeopardy in violation of the Fifth Amendment to the United States Constitution.

Tenth: The aforesaid regulations of and restrictions upon the plaintiff's conduct and activities, incorporated in the said "Order of Supervision", are, under the facts and circumstances hereinafter set forth, unlawful in that they are unreasonable and an abuse of power.

Eleventh: The imposition of any of the regulations upon and restrictions of the plaintiff's conduct and activity are

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unreasonable in that the history of the plaintiff's conduct, since the commencement of proceedings against him, establishes that they are unnecessary to insure plaintiff's availability for all lawful purposes or to secure the "interests of the United States."

The plaintiff is a man 47 years of age, was born in Russia and is now stateless. He last entered the United States legally for permanent residence in 1939. He has lived in this country continuously ever since. He is married and is the father of two American-born children, both sons, and resides with his family. He is a carpenter by trade.

So much of paragraph (2) of the "Order of Supervision" as relates to physical and mental examination at the unrestricted discretion of the defendant is unreasonable in that it is not limited to such examinations as may be necessary to effect the deportation of the plaintiff, and as to all other examinations is unnecessary, the plaintiff's health having at all times been cared for adequately by his own physicians.

So much of paragraph (2) of the "Order of Supervision" as related to the furnishing of information is unreasonable, in that (a) the defendant is free to invade the plaintiff's right to privacy, to disregard the protections [fol. 8] of and to inquire into facts and circumstances protected by such privileges as those accorded husband-wife, doctor-patient, lawyer-client and Fifth Amendment; and (b) the defendant is free to exercise the power with such frequency as to burden and harass the plaintiff as, in fact, he has done.

Paragraph (3-a), (3-b), (4) and (6) of the "Order of Supervision" are unreasonable in that they burden and restrict unnecessarily, the movements, conduct and activity of the plaintiff.

Paragraph (3-a) unnecessarily limits plaintiff's time to report a change of residence or employment in that (a) he has always been available to the defendant and his whereabouts known to the defendant; (b) he has always complied with and intends, in good faith, to continue to comply with Section 265 of the Immigration and Nationality Act of 1952, to report such changes within the statutorily prescribed time of ten days; (c) there are no reasonable grounds from which to infer that the plaintiff

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will not continue to be available to the defendant and make his whereabouts known.

Paragraph (3-b) unnecessarily restricts the plaintiff's freedom of movement in that (a) he has always been available to the defendant; (b) he intends in good faith to continue to be available to the defendant; and (c) there are no reasonable grounds from which to infer that the plaintiff will not continue to be available to the defendant and make his whereabouts known.

Paragraph (4) unnecessarily restricts the conduct of and places a burden upon the plaintiff, in that (a) he has always been available to the defendant; (b) he intends in good faith to continue to be available to the defendant; (c) there are no reasonable grounds from which to infer that the plaintiff will not continue to be available to the defendant and to make his whereabouts known.

[fol. 9] Paragraph (4) is unreasonable for the further reason that it has resulted in the curtailment and continues to effect a curtailment of the plaintiff's ability to find employment in his trade, which has substantially reduced his earning capacity and income.

Paragraph (5) unnecessarily restricts the plaintiff's freedom of movement in that (a) he has always been available to the defendant; (b) he intends in good faith to continue to be available to the defendant; (c) there are no reasonable grounds from which to infer that the plaintiff will not continue to be available to the defendant and make his whereabouts known; (d) travel beyond 50 miles from Times Square is necessary for the plaintiff, from time to time, in the pursuit of lawful travel and vacation purposes as he may desire to make in the course of normal living.

Paragraphs (5-a) and (5-b) of the "Order of Supervision" are unreasonable in that they (a) prohibit lawful membership in lawful political associations, lawful political activity and lawful personal associations; and (b) they are so vague and indefinite as to make it impossible for the plaintiff to ascertain the conduct and activities on his part prohibited by those paragraphs.

Paragraph (8) of the "Order of Supervision" is unreasonable in that it, in effect, imposes an additional crimi-

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nal penalty for criminal conduct whose penalty is fixed by statute.

[fol. 10] Twelfth: This action is brought:

(a) to secure a declaration that (I) Section 242(d) of the Immigration and Nationality Act of 1952 is unconstitutional, invalid, void and inoperative; (II) the "Order of Supervision" aforesaid, is unconstitutional, invalid, illegal, void and inoperative; (III) the aforesaid regulations of and restrictions upon the conduct and activity of the plaintiff, incorporated in the aforesaid "Order of Supervision" are unconstitutional, invalid, illegal, void and inoperative; (IV) the aforesaid regulations of and restrictions upon the conduct and activity of the plaintiff, incorporated in the aforesaid "Order of Supervision" are unreasonable and an abuse of power; and

(b) to direct the defendant to set aside *aside* and cancel the aforesaid "Order of Supervision", or, in the alternative, to strike therefrom the aforesaid regulations of and restrictions upon the conduct and activity of the plaintiff incorporated therein; and

(c) to enjoin and restrain the defendant from requiring the plaintiff (I) to submit to supervision as required by the aforesaid "Order of Supervision", or, in the alternative, (II) to comply with the aforesaid regulations of and restrictions upon his conduct and activity, incorporated in the aforesaid "Order of Supervision."

Thirteenth: This Court has jurisdiction of this action under the provisions of 5 U. S. C. § 1009 and 28 U. S. C. § 1339.

Fourteenth: Unless the relief requested herein is granted, the plaintiff will suffer irreparable injury, in that, compliance with the aforesaid "Order of Supervision" and the regulations of and restrictions upon his conduct and activities subject him to deprivations of his constitutional rights, and non-compliance is a violation of the penal provisions of Section 242(d) of the Immigration and Nationality Act of 1952, which may subject him to criminal prosecution for felony, carrying the penalty of fine in a sum not to exceed $1,000 or imprisonment not to exceed one year, or both.

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Fifteenth: The plaintiff has no adequate remedy either within the governmental agency or at law.

[fol. 11] Wherefore, the plaintiff asks the judgment of this court that:

1. A declaratory judgment be made and entered declaring that:

(a) Section 242(d) of the Immigration and Nationality Act of 1952 is unconstitutional, invalid, void and inoperative;

(b) The "Order of Supervision" hereinabove referred to, is unconstitutional, invalid, illegal, void and inoperative;

(c) The regulations of and restrictions upon the conduct and activity of the plaintiff, thereinabove referred to, incorporated in the aforesaid "Order of Supervision", are unconstitutional, invalid, illegal, void and inoperative;

(d) The regulations of and restrictions upon the conduct and activity of the plaintiff, hereinabove referred to, incorporated in the aforesaid "Order of Supervision", are unreasonable and an abuse of discretion.

2. An order be made and entered directing the defendant to set aside and cancel the "Order of Supervision", hereinabove referred to or, in the alternative, to strike therefrom the regulations of and restrictions upon the conduct and activity of the plaintiff, hereinabove referred to.

3. An order be made and entered enjoining and restraining the defendant from requiring the plaintiff (1) to submit to supervision as required by the "Order of Supervision", hereinabove referred to, or, in the alternative, (2) to comply with the regulations of and restrictions upon his conduct and activity, hereinabove referred to, incorporated in the aforesaid "Order of Supervision."

4. For such other and further relief as to this Court may deem just and proper in the premises.

Blanch Freedman & Gloria Agrin, Attorneys for Plaintiff, Office & P. O. Address 220 Broadway, Borough of Manhattan, New York 38, N. Y.

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[fol. 12] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

District File No. 2270-418 729-DDPB

A. R. No. A4 849 583

Date April 29, 1954

Order of Supervision

In the case of Michael Nukk, whose deportation in accordance with law was ordered on December 8, 1952.

Section 242(d) of the Immigration and Nationality Act provides:

> "Any alien, against whom a final order of deportation as defined in subsection (c) heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction be guilty of a felony, and shall be fined not more than $1,000 or shall be imprisoned not more than 1 year, or both."

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Therefore, it is hereby ordered that such alien shall be placed under supervision and permitted to be and to remain at large upon the following terms:

(1) That said alien shall produce himself, at time and place desigated, for deportation pursuant to the order of deportation.

(2) That said alien shall upon request produce himself at a time and place designated for the purpose of submitting to medical and psychiatric examination and/or to furnish such information as may be deemed fit and proper.

(3-a) That said alien shall notify the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) hereof of any change in residence or employment, within the immigration district, within 48 hours after change is made.

(3-b) That said alien shall apply to the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) for permission to change place of residence from one immigration district to another, at least 48 hours prior to such change.

(4) That said alien shall report in (Person) on Thursday of each week, bet. 8:45 A. M. & 3:45 P. M. to the Officer in Charge of the Immigration and Naturaliza-
[fol. 12a] tion Service at Ellis Island, New York Harbor, N. Y.

The written report shall contain (a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment, (f)

(5)(a) That said alien shall terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary branch, affiliate, or subdivision of any such group or organization.

(b) That such alien shall refrain from "associating" with any person, knowing or having reasonable ground

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to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in subparagraph (a) above, provided that the term "associating" as used in this subparagraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies, or activities of any of the organizations or activities mentioned in subparagraph (a).

(c) That said alien shall not violate Sec. 2385 of the "Smith" Act of June 25, 1948 (Section 2385 of Title 18, U. S. Code) and Section 4 of the Internal Security Act of September 23, 1950 (Sec. 783 of Title 50, U. S. Code).

(6) That said alien shall not travel outside a radius of 50 miles from Times Square, New York, N. Y., without written permission of an appropriate officer of the Immigration & Naturalization Service, New York District.

Edw. J. Shaughnessy, District Director, New York, N. Y.

I, Michael Nukk, hereby acknowledge that I have read and understand the terms of this order, a copy of which I have received. I further understand that failure to comply with the terms of this order or with any of the conditions of 242(d) of the Immigration and Nationality Act, will subject me to prosecution.

A. M. Park, Ellis Island, New York Harbor.
(Refuses to sign.) 2109 19th Street, Astoria, L. I. N. Y.

I, —— ——, hereby acknowledge that I understand the terms set forth above and hereby agree to furnish a written report — each month to the Officer in Charge concerning the alien's name, registration number, current address, place of employment, associates, and organizational activities, and that I will immediately report any failure on the part of the alien to comply with the terms of the order or information coming to my attention which might indicate

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that the alien intends to abscond or otherwise violate this order.

Witnesses: Edw. M. ——, D. P. O., H. L. Cole, D. P. O.

[fol. 13] [File endorsement omitted]

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL NUKK, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

ORDER TO SHOW CAUSE—June 2, 1954

At New York, New York, in said District, on the 2nd day of June, 1954, at 11:15 A. M.

Upon consideration of the annexed affidavit of MICHAEL NUKK, verified the 29th day of May, 1954, and upon the complaint filed herein, a copy of which is hereto attached, the Court enters against the defendant a rule to show cause why, pending the trial and disposition of this action, 1) A declaratory judgment should not be made and entered declaring that (a) Section 242(d) of the Immigration and Nationality Act of 1952 is unconstitutional, invalid, void and inoperative; (b) the "Order of Supervision" dated April 29, 1954 herein referred to is unconstitutional, invalid, illegal, void and inoperative; (c) the regulations of and restrictions upon the conduct and activity of the plaintiff, thereinabove referred to, incorporated in the aforesaid "Order of Supervision", are unconstitutional, invalid, illegal, void and inoperative; (d) the regulations of and restrictions upon the conduct and activity of the plaintiff, herein referred to, incorporated in the aforesaid "Order of Supervision", are unreasonable and an abuse of discretion. 2) An order should not be made and entered directing the defendant to set aside and cancel the "Order of Supervision" herein referred to, or, in the alternative, to strike

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therefrom the regulations of and restrictions upon the con-
[fol. 14] duct and activity of the plaintiff, herein referred to.
3) An order should not be made and entered enjoining and restraining the defendant from requiring the plaintiff (a) to submit to supervision as required by the "Order of Supervision" hereinabove referred to, or, in the alternative, (b) to comply with the regulations of and restrictions upon his conduct and activity, herein referred to, incorporated in the aforesaid "Order of Supervision."

Pending the hearing and determination of the motion upon the said rule to show cause, it appearing to the Court that great and irreparable injury may be done to plaintiff if he is compelled, or otherwise obliged, to comply with the terms and conditions of paragraphs 2 and 4 of the aforesaid "Order of Supervision" the defendant is hereby enjoined and restrained from requiring the plaintiff (a) to submit to supervision as required by paragraphs 2 and 4 of the "Order of Supervision" hereinabove referred to, or, in the alternative, (b) to comply with the regulations of and restrictions upon his conduct and activity, herein referred to, incorporated in the aforesaid "Order of Supervision."

This show cause order is made returnable before the Honorable Judges of the United States District Court for the Southern District of New York, on the 8th day of June, 1954 at 10:00 o'clock A. M. in Room 506 of the United States Court House, Foley Square, New York City. Sufficient reason appearing therefor, service of a copy of this order to show cause and the annexed affidavit of Michael Nukk on the defendant, on or before the 3rd day of June, 1954, is sufficient.

Sylvester J. Regan, U. S. D. J.

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[fol. 15] AFFIDAVIT OF MICHAEL NUKK

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL NUKK, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

MICHAEL NUKK, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the rules and regulations promulgated thereunder; (b) an "Order of Supervision" made against the plaintiff on April 29, 1954, pursuant thereto; (c) the regulations of and restrictions upon the conduct of the plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 16] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I am a man 47 years of age. I last entered the country in 1939, when I was admitted for permanent residence, and have lived in the United States continuously for ever since. I was born in Estonia and am now stateless. I am married

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and live with my wife and two young sons, native-born, aged 15 and 6. I am a carpenter by trade, although, at present, for reasons stated hereinafter, I am employed as a building superintendent.

In May, 1951, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On December 8, 1952, a final administrative order of deportation was made against me.

Thereafter, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U. S. C. A. § 1252), the Immigration Service lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U. S. 206 (1953)].

In or about April, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242 (d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252(d)], under authority granted him by Section 242.3(e) of the Immigration and Nationality Regulations [8 C. F. R. § 242.3(e)]. This order imposed upon me a series of restrictions on and regulations of my conduct and activity. On April 29, 1954, this "Order" [fol. 17] was withdrawn, and a substantially similar "Order" issued, containing regulations of and restrictions upon my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed hereto.

The supervision exercised over me herein under the terms and conditions of "Order" is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I

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should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a "supervisory" order for over a year, my capacity to earn a living has been seriously affected, my living arrangements disrupted, my normal activity and relationships curtailed, and I have been open to abuse and harassment by the defendant and his agents in the Immigration Service, who, under the "Order", have asserted petty tyranny over me.

[fol. 18] The "Order of Supervision" requires me to report in person to Ellis Island each Thursday.

The necessity to appear and report means that one working day out of each week is lost to me. I am a carpenter by trade, but because I am unable to work a full week I have found it impossible to obtain employment in my trade. In order to support my family, I have had to accept a job as the superintendent of an apartment house. As such I earn $215 per month. As a carpenter I used to be able to earn approximately $120 per week. This differential of income is of the utmost importance to me. Not only is it difficult, with the cost of living as it is, to support my family on my present earnings, but I had always wanted to send my boys through school and to be in a position in which my wife need not work. Both of these things will be made impossible unless this requirement of the order is lifted.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which disrupts my life and may injure my health. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to 48 hours, and requiring me to procure the defendant's per-

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mission—to be given or withheld in his complete discretion —to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

The further requirement that I limit my travel to a radius [fol. 19] of fifty miles from Times Square, New York City, is truly in the nature of a "house arrest" for which there is no lawful authority. The fact that the boundaries of my "House" encompass a radius of fifty miles does not negate the fact that I am being confined to prescribed jail limits. The size of the house is not the essence of "house arrest", rather it is confinement to a circumscribed area. This provision affects me in a special way, in that, some of my wife's relatives live beyond the limit of 50 miles. It had been our family practice to visit them from time to time, and, under the current "Order" this will be made impossible.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent the defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to maintain myself and my family or to exercise that freedom of movement that is my right. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as effectively to deprive me of my liberty and property?

The "Order" further gives the defendant the right to compel me to "furnish such information as may be deemed fit and proper" by the defendant or his agents in the Immigration Service. Every occasion on which I report is used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I [fol. 20] am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision". The "Order" requires weekly reporting only of "(a) the name, (b) alien registration num-

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ber, (c) date, (d) current address, (e) place of employment". Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected to sweeping interrogations as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

The "Order" directs me to:

> ". . . terminate and remain disassociated from, mem- [fol. 21] bership in, if any, support or other activity, if any, in or in futherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization.
>
> ". . . refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of the activities mentioned in [the above paragraph]; provided that the term "associates" as used in this paragraph shall not be construed to include

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members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies or activities of any of the organizations or activities mentioned in [the above paragraph]."

These directions, so apparently in violation of the Constitution's guarantee of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* has, by statute, been declared not illegal. See 50 U.S.C. §783 (f). Nor has every policy or doctrine of the Communist Party been determined—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiiliates", whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? Does it prohibit attending a meeting where [fol. 22] such doctrine or policy is discussed? Does it prohibit writing such approval in a newspaper, or in a letter?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "Policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Com-

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munist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory —the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the [fol. 23] same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is mean by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissable" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement.

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If I assert my right to be free of the imprisoning "supervision" of the "Order", I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the tem-[fol. 24-50] porary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

MICHAEL NUKK

Sworn to before me this 29 day of May, 1954, Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Certa filed with N. Y. Co. Clk. & Reg. Commission Expires March 30, 1956.

[fol. 51] AFFIDAVIT OF FRANK BORICH—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FRANK BORICH, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK, ss:

FRANK BORICH, being duly sworn deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration

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as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the Rules and Regulations promulgated thereunder; (b) an "Order of Supervision" made against plaintiff on February 19, 1953, pursuant thereto; (c) the regulations of and restrictions upon the conduct of plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

I submit this affidavit in support of the motion for [fol. 52] temporary relief set forth in the foregoing order to show cause.

I have been a legal resident of the United States since 1913, when I entered this country for permanent residence. I married a native-born American citizen, with whom I live, and we have two native-born daughters who live with us while they attend college. I am a mat-ress-maker by trade.

In July, 1949, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States.

On August 19, 1952, a final administrative order of deportation was made against me. Thereafter, by the operation of Section 242 of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252], the Immigration Service lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F.2d 964, 968, rev'd on other grounds 345 U.S. 206 (1953)].

On February 19, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252(d)], under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations [8 C.F.R. § 243.3(c)]. This order imposed upon me a series of restrictions and regulations of my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed thereto.

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The supervision exercised over me herein under the terms and conditions of the "Order" is a mere circumvention of the Constitution and the law denying to the Attorney Gen- [fol. 53] eral and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal prosecution under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a supervisory order for over a year, my capacity to earn a living has been seriously affected, my family plans disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person at Ellis Island each Friday.

To report each week takes almost one full day out of the normal work week. As a result, I have had the utmost difficulty in securing employment during the more than a year that I have been under "supervision". During 1953, I was able to procure only 12 weeks of work in my trade, the mattress industry. This year I have had to turn to [fol. 54] an industry in which I have no skills—the fur industry—in the hope of being able to get work. Since February of this year, I have had to take over 10 different jobs because of the dissatisfaction caused by my absenting myself from work once a week. It should be perfectly obvious that, as a result, I am unable to support my family. My wife, a native-born American, is forced to work in her trade as machinist, although she suffers from a condition

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that makes it dangerous to her life. She is subject, without warning, to amnesia spells that last from 20 minutes to an hour, during which time she becomes completely unaware of her surroundings. While working at her machine or traveling to and from work in the subways, she is liable to suffer serious physical injury. Yet she must keep working to help feed the family and because we are struggling to our utmost capacity to avoid the necessity of having our brilliant twin daughters, now in their junior year of college, leave school to work to help support us and themselves. We believe it would be a dreadful social waste if these girls, honor students, were compelled to forego the balance of their education. If this reporting provision of the "Order" is continued in effect and I am prevented from earning a living, it may result in the destruction of my wife and the disruption of my childrens' lives.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which deprives me of my livelihood, threatens my family's security and future and dis-[fol. 55] rupts my life. For that matter, the additional requirement of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to forty-eight hours, and requiring me to procure defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me. If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent this defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to support myself and my family, a burden to the entire community. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in

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the manner he has done and impose such demands upon me as to deprive me of property and my right to earn a living?

Occasions on which I report are used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision". The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am [fol. 56] subjected each week to sweeping interrogatories as to my associations and activities. One time, the agent in charge of me threatened that he would make me report every day if I did not respond to such queries. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements on my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, whether I had an argument with my wife, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

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The "Order" further directs me to"

"(6) That said alien shall terminate and remain disassociated from, membership in, if any, support or other activity, if any in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or any political or geographical sub-division of any state, any section, subsidiary, branch, affiliate or sub-division of any such group or organization.

[fol. 57] "(7) That such alien shall refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliates with or is engaged in any promotion of any of the activities mentioned in paragraph 6."

These directions, so apparently in violation of the Constitution's guarantee of free speech and association, are unreasonable in that they prohibit associations and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* is by statute declared to be not illegal. See 50 U.S.C. §783(f). Nor has every policy or doctrine of the Communist Party been declared—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. The same tenets apply to "affiliates" of the Communist Party, whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the "Order" affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines and policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends or neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing

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permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

[fol. 58] What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine or policy adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory—the diametric contrary to all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? What is meant by "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant by "reasonable ground to believe" that a [fols. 59-86] a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives" (a) to "play it

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safe'' and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is ''permissible'' under the ''Order'' is correct, at the risk of criminal prosecution for violating the terms of the ''Order''.

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the ''Order of Supervision'', I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning ''supervision'' of the ''Order'', I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and livelihood, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

Wherefore, I pray that the relief requested in the annexed ''Order to Show Cause'' be granted.

Frank Borich.

Sworn to before me this 1st day of June, 1954. Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Cert. filed with N. Y. Co. Clk. & Reg. Commission expires March 30, 1952. (Seal.)

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[fol. 87] AFFIDAVIT OF JOSEPH SIMINOFF—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOSEPH SIMINOFF, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

JOSEPH SIMINOFF, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the Rules and Regulations promulgated thereunder; (b) an "Order of Supervision" made against plaintiff on September 4, 1953, pursuant thereto; (c) the regulations of and restrictions upon the conduct of plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show [fol. 88] cause.

I have been a legal resident of the United States since 1906, when I entered this country at the age of seven. I married a native-born American citizen, with whom I live, and we have three sons, all of whom are veterans of the Second World War, now married and living with their own

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families. I have been and am now, a house-painter by trade.

In October, 1951, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. During all the proceedings I had been free on bail as more specifically set forth in paragraph "Eleventh" of the Complaint herein.

On February 27, 1953, a final administrative order of deportation was made against me. Six months from that date, the Immigration Service, by the operation of Section 242 of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252], lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U. S. 206 (1953).]

On September 4, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252(d)], under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations [8 C. F. R., § 242.3(c)]. This order imposed upon me a series of restrictions and regulations of my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed thereto.

The supervision exercised over me herein under the terms and conditions of the "Order" is a mere circumvention of [fol. 89] the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

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I, however, face the immediate problems which result from the unreasonableness of the regulations of and restriction upon my conduct and activities, contained in the "Order". Having lived under a supervisory order for the better part of one year, my capacity to earn a living has been seriously affected, my family plans disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person at Ellis Island each Friday.

This compels me to lose one day each week from my business as an entrepreneur-house painter. It involves not only the loss of one day's income. It means also that there are many jobs I must turn down, because my prospective cus- [fol. 90] tomers refuse to be left in the middle of a paint job for three days: Friday, the day I report, Saturday and Sunday. In fact, it has been so difficult for me to procure work in New York City, where I usually worked, that I have had to seek work out of the city, and bear the additional cost of commutation for my partner and myself. I earned only about $2,200.00 in 1953. It is obvious that such earnings are inadequate, with the cost of living as it is, to support my wife and myself. My wife, therefore, is forced to continue to work, although we had some time ago decided, because of her health, that it would be best for her not to continue; I fear that serious consequences may result.

There is no good reason for demanding such reporting on my part. I have always made myself avaliable to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirements of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which deprives me of my livelihood and disrupts my life. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to forty-eight hours, and requiring me to procure the defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and

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burdens upon me. If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent this defendant from circumscribing my move- [fol. 91] ments so completely that I will be in virtual protective custody, unable to support myself and my wife, a burden to my sons and the entire community. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as to deprive me of property and my right to earn a living?

Every occasion on which I report is used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision." The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected each week to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. For instance, on May 9, 1954, when I reported at Ellis Island at 9:30 A. M., I was told to appear again with my attorney, at 1:00 P. M. It was only her unavailability that avoided the necessity of my making two trips to the Island in one day for interrogation. The defendant's general unlimited right to demand information is so broad that even more serious [fol. 92] infringements of my right to privacy are still possible under the "Order." Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, whether I had an argument with my wife, what friends I had dinner with, where I went

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on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

The "Order" further directs me to:

> "(6) That said alien shall terminate and remain disassociated from, membership in, if any, support or other activity, if any in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or any political or geographical sub-division of any state, any section, subsidiary, branch, affiliate or sub-division of any such group or organization.
> "(7) That such alien shall refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in paragraph 6."

These directions are, so apparently in violation of the Constitution's guarantees of free speech and association, [fol. 93] are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* is by statute declared to be not illegal. See 50 U. S. C. § 783(f). Nor has every policy or doctrine of the Communist Party been declared—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. The same tenets apply to "affiliates" of the Communist Party, whatever they may be.

It is not, alone, membership in the Communist Party or

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association with Communists that the prohibitions in the "Order" affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines and policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends or neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is mean by "activity" in furtherance of "doctrines" or "Policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine or policy adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of [fol. 94] the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory—the diametric contrary to all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who

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are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? What is meant by "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I paint the house of a Communist? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leave me with equally evil alternatives: (a) to "play it [fol. 95-122] safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissible' under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order", I run the risk of immediate prosecution for a felony carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and livelihood, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed "Order to Show Cause" be granted.

Joseph Siminoff.

Sworn to before me this 29th day of May, 1954.
Blanch Freedman, Notary Public, State of New

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York. No. 31-6393650. Qualified in New York County. Certs. filed with N.Y. Co. Clk. & Reg. Commission Expires March 20, 1956.

[fol. 123] AFFIDAVIT OF FELIX KUSMAN—FILED June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FELIX KUSMAN, Plaintiff,

- against -

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss.

FELIX KUSMAN, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the Rules and Regulations promulgated thereunder; (b) and "Order of Supervision" made against plaintiff on February 1, 1954, pursuant thereto; (c) the regulations of and restrictions of and restrictions upon the conduct of plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show [fol. 124] cause.

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I have been a legal resident of the United States since 1939, when I was admitted for permanent residence. I was last a citizen of Estonia and I am now stateless. I am married to a native-born American citizen, with whom I live, and for whose support I am responsible. I have been and am now, a carpenter by trade.

In June, 1953, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On July 31, 1953, a final administrative order of deportation was made against me.

Six months from that date, on February 1, 1954, the Immigration Service, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U.S.C.A §1252), lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U.S. 206 (1953).]

On February 1, 1954, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. §1252(d)]., under authority granted him by Section 242.3(e) of the Immigration and Nationality Regulations [8 C.F.R., §242.3(e)]. This order imposed upon me a series of restrictions and regulations of my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed thereto.

The supervision exercised over me herein under the terms and conditions of the "Order" is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison [fol. 125] me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to

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face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a supervisory order for several months, I find that my capacity to earn a living has been seriously affected, my family plans disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person at Ellis Island each Monday.

The necessity to appear and report means that one working day out of each week is lost to me. This not only causes me to lose one day's pay each week, but for months, until only about three weeks ago, it kept me from securing employment. Even now that I have a job, my possible income is reduced by over $50 per week, because my absence one day per week prevents my employment as a foreman-car-[fol. 126] penter, a position which I am otherwise qualified to hold. This loss of earning power is now of critical significance to me. Before my arrest for deportation my wife was gainfully employed as a social worker for the Red Cross. As a result of "visits" by Immigration officers to her place of employment, she was discharged from her job. I am now completely responsible for my wife's support, and our family unit is thus seriously affected by the enforced drop in my earning capacity. The effect of the reporting direction of the "Order of Supervision" thus, obviously, deprives me of property to which I have a constitutional right.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which deprives me of my livelihood and disrupts my life. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days

to forty-eight hours, and requiring me to procure the defendant's permission —to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

The further requirement that I limit my travel to a radius of fifty miles from Times Square, New York City, is truly in the nature of a "house arrest" for which there is no lawful authority. The fact that the boundaries of my "house" encompass a radius of fifty miles does not negate the fact that I am being confined to prescribed jail limits. The size of the house is not the essence of "house arrest" rather it [fol. 127] is confinement to a circumscribed area. For me, this limitation further affects my earning a living. On many occasions, I practiced my trade outside of the City of New York and beyond the 50 mile limit. Now, under the "Order" this is no longer possible, and I am constrained to turn down jobs that I may desire and have a right to accept.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent this defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to support myself and my wife, a burden to the entire community. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as to deprive me of property and my right to earn a living?

Occasions on which I report are used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision". The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment."

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Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected each week to sweeping interroga- [fol. 128] tories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, whether I had an argument with my wife, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

The "Order" further directs me to:

> ". . . terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization;
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> ". . . refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of the activities mentioned [fol. 129] in [the above paragraph]; provided that the

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term "Associates" as used in this paragraph shall not to be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies or activities of any of the organizations or activities mentioned in [the above paragraph]."

These directions, so apparently in violation of the Constitution's guarantees of free speech and association, are unreasonable in that they prohibit association and political action that are acknowldged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* as, by statute, been declared not illegal. See 50 U. S. C. § 783(f). Nor has every policy or doctrine of the Communist Party been determined—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates", whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing [fol. 130] permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of

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organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory — the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a [fol. 131] Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake life-long friends who may be Communists? What are the limits to "associating" with my wife, if I should have "reasonable grounds to believe" her a Communist? May I eat dinner with her, but not discuss politics with her? Would it be a violation of the "Order" for her to help me defend against deportation charges which I am let to understand, the Communist Party also opposes?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and

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social relationships, taking the chance that my guess as to what is "permissible" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to suffer deprivation of "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order," I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon [fols. 132-159] my life and liberty, therefore, urgently require that the temporary injunctive relief requested to be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

Felix Kusman.

Sworn to before me this 1st day of June, 1954, Blanch Freedman, Notary Public, State of New York, No. 31-6393650. Qualified in New York County. Certs. filed with N. Y. Co. Clk. & Reg. Commission Expires March 30, 1956. (Seal.)

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[fol. 160] AFFIDAVIT OF ROSE LIGHTCAP—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

ROSE LIGHTCAP, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

ROSE LIGHTCAP, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the rules and regulations promulgated thereunder; (b) an "Order of Supervision" made against the plaintiff on April 29, 1954 pursuant thereto (c) the regulations of and restrictions upon the conduct of the plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 161] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I am a woman almost 50 years of age. I entered the country legally in 1913, at the age of 9, when I was admitted for permanent residence, and have lived in the United States continuously for over forty years. I was born in Russia and am now stateless. I am married and lived with

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my husband and have most usually been gainfully employed to help support our family unit.

In August, 1950, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On November 21, 1951, a final administrative order of deportation was made against me.

Thereafter, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U. S. C. A. § 1252), the Immigration Service lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U. S. 206 (1953)].

On April 16, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242 (d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252 (d)], under authority granted him by Section 242.3(e) of the Immigration and Nationality Regulations [8 C. F. R. § 242.3(e)]. This order imposed upon me a series of restrictions on and regulation of my [fol. 162] conduct and activity. On April 29, 1954, this "Order" was withdrawn, and a substantially similar "Order" issued, containing regulations of and restrictions upon my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed hereto.

The supervision exercised over me herein under the terms and conditions of "Order" is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activites and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order," in violation of my legal rights, or to

face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order." Having lived under a "supervisory" order for over a year, my capacity to earn a living has been seriously affected, my living arrangements disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who, under the "Order", have asserted a petty tyranny over me.

[fol. 163] The "Order" directs me to:

> ". . . terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization;
>
> ". . . refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of the activities mentioned in [the above paragraph]; provided that the term "Associates" as used in this paragraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies or activities of any of the organizations or activities mentioned in [the above paragraph]".

These directions, so apparently in violation of the Constitution's guarantee of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* has, by statute, been declared not illegal. See 50 U. S. C. § 783(f). Nor has every policy

or doctrine of the Communist Party been determined—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates", whatever they may be.

To abide by these regulations disrupts the normal social relations, not only of myself, but of my husband, and creates serious problems concerning his relationships with his colleagues. My husband, under the pen name of "Harry Raymond" has employment as a reporter for the *Daily Worker*. In the course of our normal life, prior to the issuance of the "Order of Supervision", I, of course, entertained his co-[fol. 164] workers and associates at our home, and entered into social relationships, outside of our home, with his colleagues and their wives. Since it is quite conceivable that the defendant might consider his associates on the *Daily Worker* to be "Communists", within the meaning of the above regulations, I am placed in a most awkward and ridiculous position. To be certain that I have not violated the "Order", our house must be closed to these people and old friends, or I must absent myself from such gatherings. As to engagements outside of the home, either my husband must go alone, or he must forego this social intercourse.

There is no adequate reason to call for an end to my relations with these people. Continual relations with them will not affect my availability to the defendant, nor can our ties in any way affect the "security" of the United States. To break these ties in no way benefits the Government and yet seriously affect my normal existence. Yet, if I engage in these relationships, I run the risk of criminal prosecution for violation of the "Order of Supervision" and face possible fine or jail.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? [fol. 165] Does it prohibit writing such approval in a news-

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paper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory —the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Com.* v. *McGrath*, 341 U. S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist [fol. 166] Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists? What are the limits to "associating" with my husband, if I should have "reasonable grounds to believe" him a Communist? May I eat dinner with him, but not discuss politics with him?

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Would it be a violation of the "order" for him to help me defend against deportation charges, which I am led to understand, the Communist Party also opposes?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissible" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

The "Order of Supervision" requires me to report in person to Ellis Island each Thursday. This travel to and [fol. 167] from the Island each week is a severe physical hardship. I am not a well woman. I have been under the constant medical attention for the past several years and the strain upon me affects my physical condition adversely.

Furthermore, to report each week takes almost one full day out of the normal work-week. As a result I have had the utmost difficulty in securing employment, necessary for the maintenance of my family unit, during the year that I have been under "supervision". In fact, it was only a little over a month ago that I procured a job as an unskilled office worker. This job is in constant jeopardy because of my continued need to absent myself from work to report, and, as well prevents me from raising my job-status and pay to the position of book-keeper which I am otherwise qualified to hold. The effect of the reporting direction of the "Order of Supervision" thus, obviously, deprives me of property to which I have a constitutional right.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which disrupts my life and may injure my health. For that matter, the additional require-

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ments of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to 48 hours, and requiring me to procure the defendant's permission —to be given or withheld in his complete discretion—to [fol. 168] change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

The further requirement that I limit my travel to a radius of fifty miles from Times Square, New York City, is truly in the nature of a "house arrest" for which there is no lawful authority. The fact that the boundaries of my "house" encompass a radius of fifty miles does not negate the fact that I am being confined to prescribed jail limits. The size of the house is not the essence of "house arrest", rather it is confinement to a circumscribed area. This provision of the "Order" as well as the reporting provision discussed above, creates serious hardship for myself, and, more particularly, my husband, as respects vacations. Last year, we were constrained to accept most inadequate vacation facilities because of these restrictions in the "Order". This year the vacation perspective is equally bad. My husband works hard and needs his yearly vacation; he will not go without me, and the "Order" limits my freedom of motion to such an extent as to prevent us from making proper vacation arrangements.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent the defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to maintain myself or to exercise that freedom of movement that is my right. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what [fol. 169] right may he limit my freedom in the manner he has done and impose such demands upon me as effectively to deprive me of my liberty and property?

The "Order" further gives the defendant the right to compel me to "furnish such information as may be deemed fit and proper" by the defendant or his agents in the Immigration Services. Every occasion on which I report

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is used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision". The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected each week to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, [fols. 170-196] unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "super-

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vision" of the "Order", I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

Rose Lightcap.

Sworn to before me this 29th day of May, 1954. Blanch Freedman, Notary Public, State of New York No. 31-6393650. Qualified in New York County. Certs. filed with N. Y. Co. Clk. & Reg. Commission Expires March 30, 1956. (Seal.)

[fol. 197] AFFIDAVIT OF IDA GOTTESMAN—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IDA GOTTESMAN, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

IDA GOTTESMAN, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Im-

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migration and Nationality Act of 1952, and the rules and regulations promulgated thereunder; (b) an "Order of Supervision" made against the plaintiff on July 6, 1953 pursuant thereto; (c) the regulations of and restrictions upon the conduct of the plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions. [fol. 198] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I am a woman 61 years of age. I entered the country legally in 1910, at the age of 17, when I was admitted for permanent residence, and have lived in the United States continuously for over forty years. I was born in Hungary now a part of Russia and am now stateless. I am unmarried and live with my sister. I have always been gainfully employed, to help support our family unit.

In June, 1949, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On September 17, 1952, a final administrative order of deportation was made against me.

Thereafter, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U. S. C. A. § 1252), the Immigration Service lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates". [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U. S. 206 (1953)].

On July 6, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252(d)], under authority granted him by Section 242.3(e) of the Immigration and Nationality Regulations [8 C.F.R. § 242.3(e)]. This order imposed upon me a series of restrictions and regulations of my conduct and activity, as more specifically set forth in

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[fol. 199] paragraph "Sixth" of the complaint herein and "Exhibit A" annexed hereto.

The supervision exercised over me herein under the terms and conditions of the "Order" is a mere circumvention of the Constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal penalties under the statutes for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a "supervisory" order for over a period of 10 months, my capacity to earn a living has been seriously affected, my living arrangements disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who, under the "Order", have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person to Ellis Island every Friday. This travel to and from the Island each week is a severe physical hardship. I am neither a young nor a well woman. I have been under [fol. 200] the constant medical attention for the past several years and the strain upon me affects my physical condition adversely.

Furthermore, to report each week takes almost one full day out of the normal work-week. I am a piece-worker in the manufacture of men's neckwear. When I leave work each week to report, particularly in rush periods, it is frowned upon by my employer and puts my job in constant jeopardy. I also suffer a loss of income that

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ranges from $30 to $50 per month. At my age, which necessarily limits my earning capacity, this is a very serious loss. I am unmarried and must not only provide for my present upkeep, but also for a time in the future when I may no longer be able to work. In addition, I am the sole support of my sister who is so ill that she is totally unable to work. The effect of the reporting direction of the "Order of Supervision" thus, obviously, deprives me of property to which I have a constitutional right.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. This requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which deprives me of property, disrupts my life and may injure my health. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to 48 hours, and requiring me to procure the defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent the defendant from circumscribing my movements so com- [fol. 201] pletely that I will be in virtual protective custody, unable to maintain myself or to exercise that freedom of movement that is my right. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as effectively to deprive me of my liberty and property?

The "Order" further gives the defendant the right to compel me to "furnish such information as may be deemed fit and proper" by the defendant or his agents in the Immigration Service. Every occasion on which I report is used

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by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision". The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirements of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected each week to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" [fol. 202] extends to, and yet he has no right to know, what I ate for breakfast, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the Constitution to exercise by legislative or administrative fiat.

The "Order" directs me to:

> ". . . terminate and remain disassociated from membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or

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geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization;

"... refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of the activities mentioned in [the above paragraph]."

These directions, so apparently in violation of the Constitution's guarantee of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* has, by statute, been declared not illegal. See 50 U.S.C.A. §783(f). Nor has every policy [fol. 203] or doctrine of the Communist Party been determined—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates", whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the "Order" affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered

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to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a [fol. 204] "foreign state"? Or—on the "Aesopian language" theory—the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123 (1951). Will the defendant deem an affiliate to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to [fol. 205-230] what is "permissable" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed

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Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order", I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

Ida Gottesman.

Sworn to before me this 1st day of June, 1954. Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Certs. filed with N.Y. Co. Clk. & Reg. Commission Expires March 30, 1956.

[fol. 231] AFFIDAVIT OF ANNA TAFFLER—Filed June 2, 1954

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ANNA TAFFLER, PLAINTIFF,

- against -

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, DEFENDANT.

STATE OF NEW YORK,
County of New York, ss:

ANNA TAFFLER, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this

action and know the matters alleged therein to be true except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the rules and regulations promulgated thereunder; (b) an "Order of Supervision" made against the plaintiff on May 26, 1953 pursuant thereto; (c) the regulations of and restrictions upon the conduct of the plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 232] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I am a woman almost 55 years of age. I entered the country legally in 1914 when I was admitted for permanent residence, and have lived in the United States continuously for almost forty years. I was born in Russia and am now stateless. I was married, and bore two sons. I am now divorced and reside with one of my sons and his wife.

In September, 1948, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On November 14, 1952, a final administrative order of deportation was made against me.

Thereafter, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U.S.C.A. §1252), the Immigration Service lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, rev'd on other grounds 345 U.S. 206 (1953)].

On May 26, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242 (d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. §1252 (d)], under authority granted him by Section 242.3 (c) of the Immigration and Nationality Regulations [8 C.F.R. §242.3(c)]. This order imposed

upon me a series of restrictions on and regulation of my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed hereto.

[fol. 233] The supervision exercised over me herein under the terms and conditions of "Order" is a mere circumvention of the constitution and the law denying the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a "supervisory" order for over a year, my capacity to earn a living has been seriously affected, my living arrangements disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who, under the "Order", have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person to Ellis Island each Wednesday. This travel to and from the Island each week is a severe physical hardship. I am not a well woman. I have been under *the* constant medical attention for the past several years and [fol. 234] the strain upon me affects my physical condition adversely.

Furthermore, to report each week takes almost one full day out of the normal work-week. As a result I have had the utmost difficulty in securing employment, necessary for my maintenance, during the year that I have been

under "supervision". This fact has now become critical. I am a divorcee and receive only $15 per week as alimony. Prior to February of this year, I lived with my two sons who contributed to my support. In January, one son married, and in February the other. Although I am living temporarily with one of my sons and his wife, it is neither fair nor good for him or for myself that I should continue to do so. I must earn money to enable me to maintain myself in my own separate apartment. I have no special skills and must find work that I can handle considering my age and physical condition. The kind of jobs I could hold would be those of a cashier or saleslady in a neighborhood shop. But, if I must be absent from work one day per week, it will be impossible for me to obtain employment.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which disrupts my life and injures my health. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to 48 hours, and requiring me to procure the defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

[fol. 235] If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent the defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to maintain myself or to exercise that freedom of movement that is my right. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the

manner he has done and impose such demands upon me as effectively to deprive me of my liberty and property?

The "Order" further gives the defendant the right to compel me to "furnish such information as may be deemed fit and proper" by the defendant or his agents in the Immigration Service. Every occasion on which I report is used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision." The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected each week to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interroga-
[fol. 236] tor, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

The "Order" further directs me to:

> ". . . terminate and remain disassociated from, membership, in, if any, support or other activity, if any in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or any political or geographical sub-division of any state, any section, subsidiary, branch, affiliate or sub-division of any such group or organization.
>
> ". . . refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in paragraph [preceding]."

These directions, so apparently in violation of the Constitution's guarantee of free speech and -ssociation, are unreasonable in that they prohibit association and political [fol. 237] action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* has, by statute, been declared not illegal. See 50 U. S. C. § 783(f). Nor has every policy or doctrine of the Communist Party been determined—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates", whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by the head of the Communist Party of a "foreign state"? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or — on the "Aesopian language" theory — the [fol. 238] diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and

social relationships, taking the chance that my guess as to what is "permissible" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

[fols. 239-264] Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order", I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

Anna Taffler.

Sworn to before me this 1st day of June, 1954. Blanch Freedman, Notary Public, State of New York, No. 31-6393650. Qualified in New York County. Certs. filed with N. Y. Co. Clk. & Reg. Commission Expires March 30, 1956.

[fol. 265] AFFIDAVIT OF BENNY SALTZMAN—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BENNY SALTZMAN, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant.

STATE OF NEW YORK,
County of New York, ss.:

BENNY SALTZMAN, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the Rules and Regulations promulgated thereunder; (b) an "Order of Supervision" made against plaintiff on October 29, 1953, pursuant thereto; (c) the regulations of and restrictions upon the conduct of plaintiff incorporated in the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 266] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I have been a legal resident of the United States since 1913, when I was admitted for permanent residence. I was last a citizen of Russia and I am now stateless. I am married and live with my wife. We bore three native-born American sons, one of who was killed in World War II. I am responsible for my wife's support. I have been and am now, a house painter by trade.

In September, 1948, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On March 4, 1953, a final administrative order of deportation was made against me.

On October 29, 1953, the Immigration Service, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U. S. C. A. § 1252), lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates". [*Mezei* v. *Shaughnessy,* 195 F. 2d 964, 968, rev'd on other grounds 345 U. S. 206 (1953)].

On October 29, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252(d)]., under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations [8 C. F. R., § 242.3 (c)]. This order imposed upon me a series of restrictions and regulations of my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed thereto.

The supervision exercised over me herein under the [fol. 267] terms and conditions of the "Order" is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a supervisory order for

several months, I find that my capacity to earn a living has been seriously affected, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person at Ellis Island on the fourth Thursday of each month.

The necessity to appear and report means that one working day out of each month is lost to me. This causes me to lose one day's pay each month and sometimes two, if reporting day is followed by rainy weather, since I am an [fol. 268] outdoor painter. Any loss of income is important to me at my age. My work is hard physical work which I may not be able to engage in much longer. Loss of earning power now means that much more risk that I will not be able to provide for my wife's and my old age, and we may become burdens upon our sons and the community.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which deprives me of part of my livelihood and disrupts my life. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to forty-eight hours, and requiring me to procure the defendant's permission, to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent this defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to support myself and my wife, a burden to the entire community. If the defendant may not, as a matter of law and constitutional

prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose [fol. 269] such demands upon me as to deprive me of property and my right to earn a living?

Occasions on which I report are used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision." The "Order" requires reporting only of "(a) the name, (b) the alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subject to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, whether I had an argument with my wife, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make [fol. 270] me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

The "Order" further directs me to:

> ". . . terminate and remain disassociated from, membership, in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization;
>
> " . . . refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of the activities mentioned in [the above paragraph].

These directions, so apparently in violation of the Constitution's guarantees of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se*, has, by statute, been declared not illegal. See 50 U. S. C § 783(f). Nor has every policy or doctrine of the Communist Party been determined —even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates," whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

[fol. 271] I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doc-

trines" or "policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state?" Or—on the "Aesopian language" theory —the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint* [fol. 272] *Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant *my* "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity

and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissable" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order," I run the risk of immediate prose- [fols. 273-299] cution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

Wherefore, I pray that the relief requested in the annexed Order to Show Cause be granted.

Benny Saltzman.

Sworn to before me this 29th day of May, 1954. Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Cert. filed with N. Y. Co. Clk. & Reg. Commission expires March 30, 1956. (Seal.)

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[fol. 300] AFFIDAVIT OF BESSIE GEISER—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BESSIE GEISER, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss.:

BESSIE GEISER, being duly sworn, deposes and says: I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the Rules and Regulations promulgated thereunder; (b) an "Order of Supervision" made against plaintiff on February 1, 1954, pursuant thereto; (c) the regulations of and restrictions upon the conduct of plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision" and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 301] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I have been a legal resident of the United States since 1907, when I was admitted for permanent residence. I was last a citizen of Russia and am now stateless. I am married to an American citizen, with whom I live, and we have a native-born daughter. I have been and am now, a dress operator by trade.

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In October, 1951, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On January 5, 1953, a final administrative order of deportation was made against me.

Six months from that date, in July, 1953, the Immigration Service, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U. S. C. A. § 1252), lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U. S. 206 (1953).]

In July, 1953, I was served with an "Order of Supervision", made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252(d)], under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations [8 C. F. R., § 242.3(c)]. This order imposed upon me a series of restrictions and regulations of my conduct and activity. On May 10, 1954, this "Order" was withdrawn, and a substantially similar "Order" issued, containing regulations of and restrictions upon my conduct and [fol. 302] actions, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed thereto.

The supervision exercised over me herein under the terms and conditions of the "Order" is mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order", in violation of my legal rights, or to face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result

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from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order". Having lived under a supervisory order for almost one year, I find that my capacity to earn a living has been seriously affected, my family plans disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person at Ellis Island each second Monday of each month.

The necessity to appear and report means that one working day out of each month is lost to me. This not only [fol. 303] causes me to lose pay each month, but puts my job in constant jeopardy because of my continual absences. At my age, 65, and that of my husband, any loss of earning is a serious matter which may mean, as we grow older, that we will become dependent on our child or the community. The effect of the reporting direction of the "Order of Supervision" thus, obviously, deprives me of property to which I have a constitutional right.

There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which deprives me of my livelihood and may disrupt my future life. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to forty-eight hours, and requiring me to procure the defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

The further requirement that I limit my travel to a radius of fifty miles from Times Square, New York City, is truly in the nature of a "house arrest" for which there is no lawful authority. The fact that the boundaries of my "house" encompass a radius of fifty miles does not negate the fact that I am being confined to prescribed jail limits. The size

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of the house is not the essence of "house arrest", rather it is confinement to a circumscribed area. For me, this limitation is a serious blow to a way of life to which I have be- [fol 304] come accustomed. As a break from my hard work, it was one of my greatest pleasures to take trips into the country, most often more than 50 miles from the City of New York. Now I must stop this harmless, pleasant pastime for no sensible reason.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent this defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to support myself, a potential burden to the entire community. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as to deprive me of property and my right to earn a living?

Occasions on which I report are used to harass and insult me, by the defendant's agents in the Immigration Service. I am put by them in a category separate and apart from all other aliens required to "report" to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision". The "Order" requires monthly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) current address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am [fol. 305] subjected each time to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order". Certainly, the defendant's power under the "Order" extends to, and yet he

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has no right to know, what I ate for breakfast, whether I had an argument with my husband, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

The "Order" further directs me to:

> ". . . terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization;
> ". . . refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged [fol. 306] in any promotion of the activities mentioned in [the above paragraph]; provided that the term "associating" as used in this paragraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies or activities of any of the organizations or activities mentioned in [the above paragraph]."

These directions, so apparently in violation of the Constitution's guarantees of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it

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or association with it *per se* has, by statute, been declared not illegal. See 50 U.S.C. §783(f). Nor has every policy or doctrine of the Communist Party been determined — even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates", whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrines or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting [fol. 307] or speaking at it prohibited?

What is meant by "doctrine" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean doctrines adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory —the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of

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the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U.S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a [fol. 308] Communist on a street corner? May I invite a Communist to my home for a social Saturday evening? Must I foresake lifelong friends who may be Communists? What are the limits to "associating" with my husband, if I should have "reasonable grounds to believe" him a Communist? May I eat dinner with him, but not discuss politics with him? Would it be a violation of the "Order" for him to help me defend against deportation charges which I am led to understand, the Communist Party also opposes?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissable" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order", I run the risk of immediate prosecution for a felony, carrying the penalty of one year in [fol. 309-335] prison and $1,000 fine. The critical present

effect upon my life and liberty, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

BESSIE GEISER

Sworn to before me this 1st day of June, 1954. Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Certs. filed with N.Y. Co. Clk. & Reg. Commission Expires March 30, 1956.

[fol. 336] AFFIDAVIT OF MARTIN YOUNG—Filed June 2, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN YOUNG, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

MARTIN YOUNG, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the rules and regulations promulgated thereunder; (b) an "Order of Super-

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vision" made against the plaintiff on April 21, 1953 pursuant thereto; (c) the regulations of and restrictions upon the conduct of the plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 337] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I am a man almost 50 years of age. I entered the country legally in 1922 when I was admitted for permanent residence, and have lived in the United States continuously ever since. I am married to an American citizen wife and have two native-born children with whom I live. I am employed as a milk salesman.

In October, 1951, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On April 22, 1952, a final administrative order of deportation was made against me.

Thereafter, by the operation of Section 242 of the Immigration and Nationality Act of 1952 (8 U. S. C. A. § 1252), the Immigration Service lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*. 195 F. 2d 964, rev'd on other grounds 345 U. S. 206 (1953)].

On April 21, 1953, I was served with an "Order of Supervision," made by the defendant herein, in alleged pursuance of Section 242 (d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252 (d)], under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations [8 C.F.R. § 242.3(c)]. This order imposed upon me a series of restrictions on and regulations of my conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein and "Exhibit A" annexed hereto.

[fol. 338] The supervision exercised over me herein under the terms and conditions of "Order" is a mere circum-

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vention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order," in violation of my legal rights, or to face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order." Having lived under a "supervisory" order for over a year, my capacity to earn a living has been seriously affected, my living arrangements disrupted, my normal activity and relationships curtailed, and I have been subject to abuse and harassment by the defendant and his agents in the Immigration Service, who, under the "Order," have asserted a petty tyranny over me.

The "Order of Supervision" requires me to report in person to Ellis Island each Tuesday. To report each week takes almost one full day out of the normal work-week. As a result I have had the utmost difficulty in carrying out the tasks of my employment and in maintaining myself in my job. I have a family to support and am as a result living in constant fear for their economic well-being.

[fol. 339] There is no good reason for demanding such reporting on my part. I have always made myself available to the defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirement of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which disrupts my life. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to 48 hours, and re-

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quiring me to procure the defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent the defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to maintain myself and my family or to exercise that freedom of movement that is my right. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as effectively to deprive me of my liberty and property?

The "Order" further gives the defendant the right to compel me to "furnish such information as may be deemed fit and proper" by the defendant or his agents in the Immigration Service. Every occasion on which I report is used by the defendant's agents in the Immigration Service to harass and insult me. I am put by them in a category separate and apart from all other aliens required to "report" [fol. 340] to the Service. At the whim of the agent in charge I am directed to sit and wait for literally nothing at all, sometimes for hours at a time, until I am permitted to leave, although at the very outset I have made the report required by the "Order of Supervision." The "Order" requires weekly reporting only of "(a) the name, (b) alien registration number, (c) date, (d) correct address, (e) place of employment." Yet, under the purported requirement of the "Order" that I "furnish such information as may be deemed fit and proper" I am subjected each week to sweeping interrogatories as to my associations and activities. From time to time, at the whim of the interrogator, I am directed to return with my attorney for further questioning. The defendant's general unlimited right to demand information is so broad that even more serious infringements of my right to privacy are still possible under the "Order." Certainly, the defendant's power under the

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"Order" extends to, and yet he has no right to know, what I ate for breakfast, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

[fol. 341] The "Order" further directs me to:

> ". . . terminate and remain disassociated from, membership, in, if any, support or other activity, if any in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or any political or geographical sub-division of any state, any section, subsidiary, branch, affiliate or subdivision of any such group or organization.
>
> ". . . refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in paragraph [preceding]."

These directions, so apparenty in violation of the Constitution's guarantee of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* has, by statute, been declared not illegal. See 50 U.S.C. § 783(f). Nor has every policy or doctrine of the Communist Party been determined —even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These

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tenets would obviously apply, as well, to "affiliates", whatever they may be.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the "Order" affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? [fol. 342] Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by the head of the Communist Party of a "foreign state"? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or—on the "Aesopian language" theory—the diametric contray of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same. Or is the determinant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

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With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or [fol. 343] does it mean that I may not pass the time of day with a Communist on *on* a street corner? May I invite a Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives: (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissible" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my property, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order," I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the temporary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

[fols. 344-371] WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

Martin Young.

Sworn to before me this 1st day of June, 1954. Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Certs. filed with N.Y. Co. Clk. & Reg. Commission Expires March 30, 1956.

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[fol. 372] AFFIDAVIT OF BORIS SKLAR—Filed May 25, 1954

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BORIS SKLAR, Plaintiff

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant.

STATE OF NEW YORK,
County of New York, ss.:

BORIS SKLAR, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure: (1) a declaration as to the validity of (a) Section 242(d) of the Immigration and Nationality Act of 1952, and the rules and regulations promulgated thereunder; (b) an "Order of Supervision" made against the plaintiff on May 17, 1954 pursuant thereto; (c) the regulations of and restrictions upon the conduct of the plaintiff incorporated in the said "Order of Supervision"; (2) an order directing the defendant to set aside and cancel the said "Order of Supervision"; and (3) an order enjoining and restraining the defendant from requiring the plaintiff to submit to the said "Order of Supervision" and its terms and conditions.

[fol. 373] I submit this affidavit in support of the motion for temporary relief set forth in the foregoing order to show cause.

I am a man 68 years of age. I entered the country legally in 1913, when I was admitted for permanent residence, and have lived in the United States continuously for over forty years. I was born in Russia and am now stateless. I was married and lived with my wife until her death several

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years ago. I am a journalist and before my arrest for deportation, I had been employed by the Russian-language newspaper *Russky Golos;* I hope to be employed by this paper again, on a part-time basis.

In September, 1953, I was arrested for deportation on the charge that, after entry, I had been a member of the Communist Party of the United States. On November 17, 1953, a final administrative order of deportation was made against me.

Six months from that date, on May 17, 1954, the Immigration Service, by the operation of Section 242 of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252], lost its power to detain me—or, in the alternative, to keep me under bond—as a matter of "legislative policy in line with constitutional mandates." [*Mezei* v. *Shaughnessy*, 195 F. 2d 964, 968, rev'd on other grounds 345 U.S. 206 (1953)].

On May 17, 1954, I was served with an "Order of Supervision," made by the defendant herein, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252(d)], under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations [8 C.F.R. § 242.3(c)]. This order imposed upon me a series of restrictions on and regulations of my conduct and activity, as more specifically set forth in para-
[fol. 374] graph "Sixth" of the complaint herein and "Exhibit A" annexed hereto.

The supervision exercised over me herein under the terms and conditions of "Order" is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to detain or imprison me. The physical restrictions on my movements, the fetters upon my thinking, my activities and my way of making my living are removed from actual imprisonment by degree only, and not in kind or substance.

I have been advised and I fully believe that the statute and regulations under which the defendant acted and the restrictions and regulations contained in the "Order of Supervision" are unconstitutional, invalid and illegal. I should, therefore, not be required to subject myself to the terms of the "Order," in violation of my legal rights, or to

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face the risk of criminal penalties under the statute for the legitimate exercise of my rights.

I, however, face the immediate problems which result from the unreasonableness of the regulations of and restrictions upon my conduct and activities, contained in the "Order." If I must live under this "Order," my capacity to earn a living may be seriously affected, my living arrangements disrupted, my normal activity and relationships curtailed, and I may be open to abuse and harassment by the defendant and his agents in the Immigration Service, who, under the "Order," have arrogated to themselves the power of petty tyrants.

The "Order" directs me to:

> ". . . terminate and remain disassociated from, membership in, if any, support or other activity, if any, in [fol. 375] or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any State, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization;
>
> ". . . refrain from associating with any person knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of the activities mentioned in [the above paragraph]; provided that the term "Associates" as used in this paragraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies or activities of any of the organizations or activities mentioned in [the above paragraph.]"

These directions, so apparently in violation of the Constitution's guarantee of free speech and association, are unreasonable in that they prohibit association and political action that are acknowledged to be legal. The Communist Party has never been declared illegal, and membership in it or association with it *per se* has, by statute, been declared not illegal. See 50 U.S.C. § 783(f). Nor has every policy or

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doctrine of the Communist Party been determined—even by the Courts—to be violative of any law of the United States, nor in fact may they be made so. These tenets would obviously apply, as well, to "affiliates," whatever they may be.

For me to abide by the above regulations would constrain me to give up my residence. Since the death of my wife, I have been boarding at the home of Albert Lannon and his family, Mr. Lannon having been indicted and convicted of violating the Smith Act as one of the twelve defendants in *United States* v. *Flynn*, (U.S.D.C., S.D.N.Y.). The Lannon family in the past few years have sheltered and cared for me as though I were a father. They have tended to my physical needs and have afforded me the personal warmth, affection and sociability that a human being requires to [fol. 376] live happily. In addition, I have been able to make financial arrangements with them commensurate with my ability to pay. If I must leave this home, it will create severe hardship for me. I am an old man and I am ailing. I feel that I can no longer live alone and care for myself. I require the care that the Lannon family offers me. I am no longer financially able to support myself independently. I am living on my old age pension of approximately $85 per month, and hope by part-time work to be able to supplement this amount. Even then, it will not be possible for me to pay rent, eat meals in restaurants—as opposed to family meals at the Lannons—and take care of clothing and other needs. There is no adequate reason, on the other hand, to call for an end to my relations with the Lannons. Continual relations with them will not affect my availability to the defendant, nor can our purely family-like ties in any way affect the "security" of the United States. To break these ties will in no way benefit the Government and yet will seriously affect me. Yet, if I continue to reside with the Lannons, I run the risk of criminal prosecution for violation of the "Order of Supervision" and face possible fine or jail.

It is not alone membership in the Communist Party or association with Communists that the prohibitions in the order affect. The language of the "Order" is so vague and indefinite as to make it impossible for me to ascertain generally what it is I must or may not do.

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I do not know what the defendant deems "support" of doctrines or policies of the Communist Party. Does it mean public speech making? Or does it prohibit as well, approval expressed over the dinner table to friends and neighbors? [fol. 377] Does it prohibit writing such approval in a newspaper, or in a letter? Does it prohibit attending a meeting where such doctrine or policy is discussed?

What is meant by "activity" in furtherance of "doctrines" or "policies" of the Communist Party? Is writing permitted, but walking on a picket line prohibited? Is attending a meeting permitted, but organizing a meeting or speaking at it prohibited?

What is meant by "doctrines" or "policies" of the Communist Party? Does it mean doctrines or policies held exclusively by the Communist Party and by no other organizations and persons? Does it mean any doctrine adhered to by the Communist Party, although tens of organizations and thousands of other persons also subscribe to them? Are they those expressed in the Constitution of the Communist Party? In the Daily Worker? Or those expressed by a Communist street-corner speaker in Kalamazoo? Or those expressed by the head of the Communist Party of a "foreign state"? Or—on the "Aesopian language" theory—the diametric contrary of all that these say?

What is to be deemed an "affiliate" of the Communist Party from which I must disassociate and terminate membership and desist from supporting its doctrines and policies? There is no legislative or judicial finding as to which organizations are "affiliates" of the Communist Parties of the various states, or political subdivisions of the states, or of the various foreign countries. See: *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123 (1951). Will the defendant deem an "affiliate" to be an organization whose policies are identical with that of the Communist Party? Or some of whose policies are the same? Or is the deter- [fol. 378] minant to be the number of Communists who are officers of the organization, or members of it, and if so, how many?

With whom am I required to refrain from "associating"? Does it mean "associating" in the Communist Party? Or does it mean that I may not pass the time of day with a Communist on a street corner? May I invite a

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Communist to my home for a social Saturday evening? Must I forsake lifelong friends who may be Communists?

What is meant by "reasonable ground to believe" that a person is a Communist? Must I become the insurer of the political probity of each person with whom I associate?

The vagueness of these prohibitions in the "Order" leaves me with equally evil alternatives: (a) to "play it safe" and relinquish all political expression and activity and many social relationships, or (b) to engage in—what I consider to be—normal and legal political activity and social relationships, taking the chance that my guess as to what is "permissible" under the "Order" is correct, at the risk of criminal prosecution for violating the terms of the "Order".

The "Order of Supervision" requires me to report in person to Ellis Island each Monday morning. This travel to and from the Island each week is a severe physical hardship on a person of my age and delicate physical condition. I have been under constant medical attention for the past several years and have every reason to believe that the strain upon me will affect my physical condition adversely.

There is no good reason for demanding such reporting on my part. I have always made myself available to the [fol. 379] defendant for any proper purpose. My whereabouts have always been known to him. It is my intention to continue to honor my commitments. The requirements of reporting accomplishes nothing more for the defendant, but, for me, imposes an onerous burden which disrupts my life and may injure my health. For that matter, the additional requirements of the "Order of Supervision" cutting my statutory time to report a change of address from ten days to 48 hours, and requiring me to procure the defendant's permission—to be given or withheld in his complete discretion—to change my residence to another immigration district, are equally unnecessary restrictions and burdens upon me.

The further requirements that I limit my travel to a radius of fifty miles from Times Square, New York City, is truly in the nature of a "house arrest" for which there is no lawful authority. The fact that the boundaries of my "house" encompass a radius of fifty miles does not negate the fact that I am being confined to prescribed jail limits.

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The size of the house is not the essence of "house arrest", rather it is confinement to a circumscribed area.

If I am available for all purposes for which the defendant may request my presence, these regulations constitute nothing less than a form of imprisonment. There is nothing, in their broad permissiveness, that can prevent the defendant from circumscribing my movements so completely that I will be in virtual protective custody, unable to maintain myself or to exercise that freedom of movement that is my right. If the defendant may not, as a matter of law and constitutional prerogative, keep me in detention, if he may not demand that I give bail for my freedom, by what right may he limit my freedom in the manner he has done and impose such demands upon me as effectively to de- [fol. 380] prive me of my liberty and property?

The "Order" further gives the defendant the right to compel me to "furnish such information as may be deemed fit and proper" by the defendant or his agents in the Immigration Service. As with others of whom I have heard, I have every reason to believe that I will be subjected to sweeping interrogatories concerning every phase of my life, my activities, my associations and other infringements of my right to privacy. Certainly, the defendant's power under the "Order" extends to, and yet he has no right to know, what I ate for breakfast, what friends I had dinner with, where I went on Saturday night, what I think of the war in Indo-China or the prospects of an economic depression. The "Order" gives the defendant the same unlimited right to subject me to physical and mental examination, unconnected with the effectuation of my deportation and without regard to the fact that I have always cared adequately for my own health. All of these regulations have a potential as an instrument of harassment and, in a greater or lesser degree, make me the defendant's prisoner with power in him, directly and indirectly to exercise control over my life. This is the control he is forbidden by the constitution to exercise by legislative or administrative fiat.

Unless the temporary relief requested in the annexed Order to Show Cause is granted, I will suffer irreparable injury. If I continue to abide by the terms of the "Order of Supervision", I continue to suffer deprivation of my prop-

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erty, my political rights and my freedom of movement. If I assert my right to be free of the imprisoning "supervision" of the "Order," I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine. The critical present effect upon my life and liberty, therefore, urgently require that the tem- [fols. 381-409] porary injunctive relief requested be granted.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed Order to Show Cause be granted.

Boris Sklar.

Sworn to before me this 24th day of May, 1954. Blanch Freedman, Notary Public, State of New York, No. 31-6393650. Qualified in New York County. Certs. filed with N. Y. Co. Clk. & Reg. Commission Expires March 20, 1956.

[fol. 410] AFFIDAVIT OF BETTY GANNETT—Filed August 6, 1953

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BETTY GANNETT, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

BETTY GANNETT, being duly sworn, deposes and says:

I am the plaintiff in the above-captioned action and submit this affidavit in support of the motion for temporary relief as set forth in the foregoing Order to Show Cause.

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I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure a declaration as to the validity of (1) Section 242(d) of the Immigration and Nationality Act of 1952; (2) an order of supervision made against plaintiff on July 20, 1953 pursuant to said Section (3) the regulations and restrictions upon the conduct of plaintiff incorporated in the said order of supervision; and to direct the defendant to set aside and cancel the said order; and to enjoin and restrain defendant from requiring plaintiff to submit to the said order and its terms and conditions.

I have been a legal resident of the United States since 1914, when I was a child of eight. I am married to an American citizen.

[fol. 411] I have been the subject of deportation proceedings since March 28, 1949, at which time I was served with a warrant of deportation. A final administrative order of deportation was entered against me on October 31, 1952 on the grounds that after entry I was a member of the Communist Party of the United States.

I have been enlarged on administrative bail ever since the commencement of the said deportation proceeding against me, except for such times and such conditions as are more specifically set forth in paragraph "Eleventh" of the complaint in this action.

In June of 1951, I was arrested and indicted for conspiracy to violate the Smith Act (18 U. S. C. 2385). I was tried before a court and jury in the U. S. District Court for the Southern District of New York, and in February, 1953 I was convicted and sentenced to imprisonment for two years. I have appealed from this conviction to the Court of Appeals for the 2nd Circuit, and I am presently preparing and processing my appeal. I have been, since the commencement of the said criminal proceeding, and am presently enlarged on bail in the sum of $20,000.

I was born in Russia, I am at the present time stateless,

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and as I have said, I am under a prison sentence, so that, during the six months following the entry of the final administrative order for my deportation, I could not make any effort to depart from the United States, nor did the Immigration Service make any effort to deport me.

Under Section 242 of the Immigration and Nationality Act of 1952, the Immigration Service, by operation of law, has lost its power to detain me, as a matter of "legislative policy in line with constitution mandates." (*Mezei* v. *Shaughnessy*, 195 F. 2nd, 964, 968 rev'd on other grounds, 73 S-Ct. 625).

On July 20, 1953, I was served with an "Order of Supervision", made, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952, by the defendant, under authority granted him by Section 242.3(c) of the Immigration and Nationality Regulations (8 C. F. R.). This order imposes upon me a series of regulations of and restrictions upon my conduct and activity, as more specifically set forth in paragraph "Sixth" of the [fol. 412] complaint herein, and Exhibit A annexed thereto.

The supervision exercised over me herein under the terms and conditions of the order is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to imprison me. The physical restrictions upon my movements, the fetters upon my thinking and thoughts, my activities, and my way of making a living are removed from actual imprisonment in degree only, and not in kind or substance.

Since the defendant cannot keep me in physical custody at a place of detention subjected to his regulations of my conduct, how can it now be demanded of me that I be subjected, in his unlimited discretion, to mental and physical examinations. I have never been ill wherein I have been unable to take care of myself without becoming a burden or a danger to the community. Whenever ill, I have engaged my own physicians, paid for them and been treated as they and I saw fit to cure or alleviate my condition. And as for psychiatric examination, I submit is it now to become the Immigration Service' policy to lay the ground work for "brain washing" of political dissidents!

Since I cannot be imprisoned, on what lawful theory

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may my movements be limited to "a radius of fifty miles from Times Square"?—or require me to report at Ellis Island every Tuesday of my life?—or secure defendant's permission to move my home from New York State, across the river to New Jersey, or elsewhere? During all times that I have been at liberty under bond I have been amenable to process. I always have appeared before all governmental authorities as requested and I always have honored every condition of my bail bond. No reason exists to believe that I will not continue to do so, and I represent to this court that I will at all times be available for deportation, or any lawful process or request of the government and, more specifically, of the defendant. Under the circumstances of my lawful employment and my lawful normal routine of living, these conditions are harsh, unreasonable and abusive. The requirement of travelling to Ellis Island every Tuesday of my life is not mere inconvenience, it is a physical hardship, a drain upon my energies, and a serious interference with my job and routine of work.

[fol. 413] The "Order of Supervision" imposes upon me a virtual "house arrest", for which there is no lawful authorization. The fact that the boundaries of my "house" encompass "a radius of 50 miles from Times Square" does not negate the fact that I am being confined to prescribed jail limits. The size of a house is not the essence of a "house arrest", rather it is the confinement to a circumscribed area.

The fact of the matter is, as the defendant well knows, that I do not, in practice, have the freedom of movement of a 50 mile radius.

The 50 mile radius prescribed in the order should permit me to go Southeast to Brooklyn and Long Island, West to New Jersey and Northeast to Connecticut. However, when read in conjunction with the jail limits imposed upon me by the District Court for the Southern District of New York, the "Order of Supervision", in effect, permits me only to go 50 miles in one direction—due North. Hence, not only is the right to go to Brooklyn, New Jersey and Connecticut illusory, but the jail limits of the court bail are cut down by about 100 miles since the Southern District

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extends as far North as Hudson and includes all of Sullivan County—all of which is beyond the 50 mile radius limit of the "Order of Supervision" herein.

These regulations of my conduct require that I give "information deemed fit and proper" in the unlimited discretion of the defendant, his representatives or agents. Such a regulation leaves the defendant free to demand of me information which in the present period of hysteria, if given, government authorities may use to incriminate me. Other information may be such as relates to communications to my husband, my doctor or my lawyer, all of which no one has the legal right to extract from me. The defendant's general unlimited right to demand information is unreasonable in that it could constitute a serious breech of my right to privacy, and might put me in the degrading position of being an informer against other people. Certainly, his power under this order extends to, and yet he has no right, to know, what I ate for breakfast, whether I had an argument with my husband, what friends I had dinner with, where I went on Saturday night, what I think of the municipal elections, the war in Korea, the 15 cents subway fare, or the prospects of an economic depression. Is the Service saying that the heart and mind of an alien is to be an open book for any government official—high or petty—to read?

The order further directs me to:

[fol. 414]"(6) That said alien shall terminate, and remain disassociated from, membership, in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state, or of any political or geographical subdivision of any state, and section, subsidiary, branch, affiliate or sub-division of any such group or organization.

"(7) That such alien shall refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in Paragraph 6."

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I have been advised that such regulations are unconstitutional and illegal. I submit to this court that I have stated what I believe to be the program and activities of the Communist Party before Hon. Edward J. Dimmock, a judge of this court and the trial judge in the Smith Act prosecution against me. I stated, in part:

> "Will the jailing of Communists, your Honor, wipe out the stark reality of today, that monopoly capitalism in this, the richest country in the world, can keep its wage slaves at work only because production is geared for destruction and war, for mass violence?
>
> Will the jailing of Communists make less inhuman the expenditure of seven and one-half billion dollars for atom bombs—for horrible weapons of mass annihilation—while funds are unavailable to wipe out the degrading slums which defile our cities, or to build sorely needed schools, hospitals, playgrounds and parks?
>
> Will the jailing of Communists halt the senseless, barbarous war in Korea which brings death and destruction to innocent men and women and children and heartlessly cuts short the young lives of sons reared with so much love and tears by tens of thousands of American parents? How heinous a crime is this war in Korea, is most revoltingly exposed in 'Operation Smack' with its decorated programs for the onlookers of the orgy of killings and maimings.
>
> Will the jailing of Communists, your Honor, abolish the centuries-old oppression of the Negro people, the lynchings and the frame-ups, the segregated ghettoes, the indignities and humiliation daily perpetrated against a proud and courageous people so that Southern plantation owners together with the bloated men of Wall Street can squeeze out extra billions in super-profits from the second-class citizenship status of the Negro people?
>
> Of course not. These evils are the evils of a decadent capitalism which holds human life cheap and the scramble for gold sacred.
>
> It is because the Communist Party is dedicated to the abolition of these evils, that I am a Communist.

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It is because the Communist Party points to the vast scientific and technical knowledge which can, once the [fol. 415] conditions of capitalism are eliminated, produce a life of abundance for all, that I am a Communist.

It is because the Communist Party rejects the misanthropic theory of racism and white superiority, and recognizes neither the superiority nor the inferiority of any people, that I am a Communist.

It is because the Communist Party struggles with all its energies against the twin menace of war and fascism, that I am a Communist.

It is because the Communist Party teaches that human beings were meant to live in peace, in dignity, in equality and freedom, and to apply the treasury of human knowledge to the material and cultural well-being of mankind and not for profit and greed of a few, that I am a Communist.

Whether in those years long ago in New York, or in the struggles of the young miners and steel workers in Ohio, or among the unemployed in Pennsylvania, the steel workers of Ambridge and Youngstown, the agricultural migratory workers of California, the metal miners of Butte, I have tried to help the workers understand that only unity, only organization, only struggle can improve their working and living conditions, and that only the ideas of communism will point the way to permanent security, permanent peace and permanent progress."

To this Judge Dimmock replied:

"You have not been convicted or sentenced for the things which you described when you addressed the Court before sentence. You have been convicted of and sentenced for a conspiracy to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence. If all that you had done were the things that you described in addressing the Court, you would not have been convicted and would not have been sentenced."

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Clearly, it is unreasonable to frame a regulation which could prohibit and subject to criminal prosecution the advocacy and teaching of doctrines (which I understand to be those of the Communist Party) and which a Judge of this Court deemed to be lawful and a proper exercise of the right of freedom of thought and expression.

However, assuming arguendo their validity, I submit the language in which they are drawn is so vague and of such indefiniteness in meaning, that I must represent to this Court that I have no way of ascertaining precisely what it is I am being called upon to do and what it is I am being enjoined from doing.

My work, as an employee of the Communist Party is [fol. 416] that of Educational Director. This involves research, writing articles, and lecturing on the program and policies of the Communist Party, the preparation of study materials for its members.

I do not know what "disassociating" from the Communist Party (or other organizations listed) means. What must I do to "disassociate". Am I to give up my job—my only source of livelihood?

The regulations directs that I do not "support" or further "the doctrines and policies of the Communist Party." Is my research, and are my writings to be considered the proscribed "support" or "activity" in "furtherance of the doctrines and policies" of the Communist Party (or other listed organizations)? I do not know what would be deemed, under the order, to be Communist Party doctrine or policy. I know, for example, that opposition to discrimination against the Negro people in housing, jobs, schools, etc., is a basic Communist Party doctrine. I also know that this policy and position is advocated and supported by the National Association for the Advancement of Colored People and hundreds of other organizations and individuals. Under the "Order of Supervision" am I proscribed from supporting and furthering such a policy? Does not the same rationale apply to advocating an armistice truce in Korea?—or urging the repeal of the Smith and McCarran Acts or any of the innumerable views of social, economic and political problems of the day.

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Under the said order, not only must I not support or further the doctrines of the Communist Party, but must I desist similarly from activity in relation to an "affiliate" thereof. No standard or guide is afforded me to determine which organization the defendant now, or will in the future, deem an "affiliate" of the Communist Party.

Section 7 of the "Order of Supervision" imposes restrictions that would change my whole life, would seriously affect my liberty and deprive me of my earning power.

If I cannot associate with Communists, it means I cannot properly prepare and prosecute my appeal from the Smith Act conviction now pending in the Court of Appeals. My co-defendants, with whom I must consult and collaborate, are, obviously, known members of the Communist Party. This regulation, therefore, is tantamount to a denial of my right to take my appeal.

[fols. 417-446] To disassociate from "Communists" would, as well mean, that I must resign my job and give up social relationships of long standing.

Unless the temporary relief requested in the annexed order to show cause is granted, I will suffer irreparable injury. If I comply or attempt to comply—at my hazard—with the terms of the "Order of Supervision", I will, in effect, imprison myself, be forced to forego my livelihood and lawful social and business relations and cease the preparation of my appeal which is being jointly prosecuted with my eleven other co-defendants. If I do not, and cannot, comply, I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine.

No other demand for the relief requested herein has been made to any other court or judge thereof.

WHEREFORE, I pray that the relief requested in the annexed "Order to Show Cause" be granted.

Betty Gannett.

Sworn to before me this 4th day of August, 1953. Blanch Freedman, Notary Public, State of New York No. 31-6393650. Filed N. Y. County, N. Y. Com. expires 3/30/54.

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[fols. 447-448] AFFIDAVIT OF ALEXANDER BITTLEMAN—Filed August 6, 1953

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BITTLEMAN, Plaintiff,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

ALEXANDER BITTLEMAN, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action and submit this affidavit in support of the motion for temporary relief set forth in the foregoing Order to Show Cause.

I am fully familiar with the facts and circumstances of this case. I have read and know the contents of the complaint in this action and know the matters alleged therein to be true, except as to those matters alleged upon information and belief, and as to those matters I believe it to be true.

The purport of the action is to secure a declaration as to the validity of (1) Section 242(d) of the Immigration and Nationality Act of 1952; (2) an order of supervision made against plaintiff on July 20, 1953, pursuant to said Section (3) the regulations and restrictions upon the conduct of plaintiff incorporated in the said order of supervision; and to direct the defendant to set aside and cancel the said order; and to enjoin and restrain defendant from requiring plaintiff to submit to the said order and its terms and conditions.

[fol. 449] I have been a legal resident of the United States since February 6, 1912. I am now past sixty-three years of age, married and reside with my wife on Mt. Airy Road, Croton-on-the-Hudson, New York.

I have been the subject of deportation proceedings since

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January 14, 1948, at which time I was served with a warrant of deportation. A final administrative order of deportation was entered against me on March 26, 1952, on the grounds that after entry I was a member of the Communist Party of the United States.

I have been enlarged on administrative bail ever since the commencement of the said deportation proceeding against me, except for such times and such conditions as are more specifically set forth in paragraph "Eleventh" of the complaint in this action.

In June of 1951, I was arrested and indicted for conspiracy to violate the Smith Act (18 U.S.C. 2385). I was tried before a court and jury in the United States District Court for the Southern District of New York, and in February, 1953, I was convicted and sentenced to imprisonment for three years. I have appealed from this conviction to the Court of Appeals for the Second Circuit, and I am presently preparing and processing my appeal. I have been, since the commencement of the said criminal proceeding, and am presently enlarged on bail in the sum of $20,000.

I was born in the City of Berdichev, Province of Kiev, Russia, on January 9, 1890, but I am at the present time stateless, and as I have said, I am under a prison sentence, so that, during the six months following the entry of the final administrative order for my deportation, I could not make any effort to depart from the United States, nor did the Immigration Service make any effort to deport me.

[fol. 450] Under Section 242 of the Immigration and Nationality Act of 1952, the Immigration Service, by operation of law, has lost its power to detain me, as a matter of "legislative policy in line with constitutional mandates." Mezei v. Shaughnessy, 195 F. 2nd, 964, 968 rev'd on the grounds, 73 S. Ct. 625).

On July 20, 1953, I was served with an "order of supervision", made, in alleged pursuance of Section 242(d) of the Immigration and Nationality Act of 1952, by the defendant, under authority granted him by Section 242.3(c) of the Immigration and Nationality regulations (8 C.F.R.). This order imposes upon me a series of regulations of and restrictions upon my conduct and activity, as more specifi-

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cally set forth in paragraph "Sixth" of the complaint herein, and Exhibit A annexed thereto.

The supervision exercised over me herein under the terms and conditions of the order is a mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to imprison me. The physical restrictions upon my movements, the fetters upon my thinking, my activities and my way of making a living are removed from actual imprisonment in degree only, and not in kind or substance.

Since defendant cannot keep me in physical custody at a place of detention, subjecting my conduct to regulations, how can it now be demanded of me that I be subjected, in unlimited discretion, to mental and physical examinations. I have never been ill wherein I have been unable to take care of myself without becoming a burden or a danger to the community. Whenever ill, I have engaged my own physicians, paid for them and been treated as they and I saw fit to cure or alleviate my condition. And as for psychiatric examination, I submit is it now to become the Immigration Service's policy to lay the groundwork for declaring political dissidents insane!

[fol. 451] Since I may not be imprisoned, on what lawful theory may my movements be limited to a "radius of fifty miles from Times Square"?—or require me to report at Ellis Island every Tuesday of my life?—or secure defendant's permission to move my home from Croton to Newark, or elsewhere?" During all times that I have been at liberty under bond I have been amenable to process. I always have appeared before all governmental authorities as requested and I always have honored every condition of my bail bond. No reason exists to believe that I will not continue to do so, and I represent to this court that I will at all times be available for deportation, or any lawful process or request of the government and, more specifically, of the defendant. Under the circumstances of my lawful employment and my lawful normal routine of living, these conditions are harsh, unreasonable and abusive. I am a man past 63 years of age. The requirement of travelling to Ellis Island every Tuesday of my life is not mere incon-

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venience, it is a serious physical hardship and drain upon my energies.

I live in a rural community, 35 miles from Times Square where casual travel by car in performing the ordinary necessities of living—as shopping for food, social intercourse, etc. take me beyond the figurative chalk mark 15 miles from my home. The order of supervision imposes upon me a virtual "house arrest",—for which there is no lawful authorization. The fact that the boundaries of my "house" encompass "a radius of 50 miles from Times Square" does not negate the fact that I am being confined to prescribed jail limits. The size of a house is not the essence of a "house arrest", rather, it is the confinement to a circumscribed area.

The fact of the matter is, as the defendant well knows, that I do not, in practice, have the freedom of movement of a 50 mile radius.

[fol. 452] The 50 mile radius prescribed in the order should permit me to go southeast to Brooklyn and Long Island, west to New Jersey and north to Connecticut. However, when read in conjunction with the jail limits imposed upon me by the District Court for the Southern District of New York, the order of supervision, in effect, permits me only to go 50 miles in one direction—due north. Hence, not only is the right to go to Brooklyn, New Jersey and Connecticut illusory, but the jail limits of the Court bail are cut down by about 100 miles, since the Southern District extends as far north at Hudson and includes all of Sullivan County—all of which is beyond the 50 mile radius limit of the "Order of Supervision" herein.

These regulations of my conduct require that I give "information deemed fit and proper" in the unlimited discretion of the defendant, his representatives or agents. Such a regulation leaves the defendant free to demand of me information which I may fear, if given, government authorities may use to incriminate me. Other information may be such as relates to communications to my wife, my doctor or my lawyer, all of which no one has the legal right to extract from me. The defendant's general unlimited right to demand information is unreasonable in that it could constitute a serious breach of my right to privacy. Certainly, his power under this order extends to, and yet he

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has no right to know, what I ate for breakfast, whether I had an argument with my wife, what friends I had dinner with, where I went on Saturday night, what I think of the municipal elections, the war in Korea, the 15 cents subway fare, or the prospects of an economic depression. Is the Service now saying that the heart and mind of an alien is to be an open book for any government official—high or petty—to read?

The order further directs me to:

> [fol. 453] ". . . terminate, and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate or sub-division of any such group or organization.
>
> . . . refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in Paragraph 6."

I have been advised that such regulations are unconstitutional and illegal.

I submit to this Court that I have stated my understanding of the doctrines and policies of the Communist Party before Hon. Edward J. Dimmock, a Judge of this Court and the Trial Judge in the Smith Act prosecution against me. I stated:

> ". . . Marxism-Leninism is proving to be the savior of humanity. I mean the teachings of Marx, of Engels, of Lenin, of Stalin, the teachings of our Party, and not the stool-pigeon version of Marxism-Leninism concocted by the FBI and the Department of Justice.
>
> Marxism-Leninism has already proven—proven in life—to be the surest, the truly scientific guide, not to violent revolution, not to violent overthrow of the American Government, but a guide to every progressive thought and action of our time.

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I am therefore proud and happy to reaffirm my complete and unreserved devotion to the working class teachings, principles and theories of Marxism-Leninism.

And I must add this: To write as I did, that Stalin is the greatest leader of men in our epoch is not a crime against our nation. I say it is a patriotic service. How? Because it helps the American people understand better the world we live in and the new world that is taking shape before our eyes; because it [fol. 454] helps our people overcome the warmongers and fascists in our own midst and to accept the offers of peace, peaceful collaboration and co-existence that consistently and persistently come from Stalin and the Soviet Union; because it helps our working class and all other people to benefit, to learn from the scientific and world-liberating teachings of the greatest living interpreter and creator of Marxism-Leninism.

It is precisely with the help of these Marxist-Leninist teachings that we, the American Communists, have found finally our way to what we call and believe is the American road to socialism. This is the road of struggle for peace and democracy which in our estimation must lead to the curbing of the economic and political power of the monopolists.

It must lead to the rise of a powerful anti-fascist and anti-monopoly peace coalition, led by the working class, and to the election of a government representing and backed by such a coalition. And then we say further: the victory of the American people in this phase of struggle against the monopolies will create the condition for the election of a government committeed to socialism, peacefully, democratically and constitutionally, a government fulfilling the tasks and functions of a proletarian dictatorship. This government will, in our interpretation, build up the new state power that will abolish capitalism and build socialism.

This is our advocacy and teaching. This is what I wrote in the very article which the Government cited in the indictment as my overt act which they never dared to cite in these proceedings.

Writing on the long-range meanings of the fight for

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peace and democracy I said in this overt act: It is the fight for curbing the powers of the monopolists, for preserving, extending and further developing the democratic gains and liberties of the American people, for the establishment of conditions favorable for the peaceful transition to the Socialist Revolution in the United States."

This was written and published in Political Affairs in September, 1948, page 12, second column, beginning with line 4—my overt act—." (pp. 16424-16426.)

To these remarks Judge Dimmock replied:

"THE COURT: (to the defendants) You have not been convicted or sentenced for the things which you described when you addressed the Court before sentence. You have been convicted of and sentenced for a con- [fol. 455] spiracy to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence. If all that you had done were the things that you described in addressing the Court, you would not have been convicted and would not have been sentenced."

Clearly, it is unreasonable to frame a regulation which could prohibit and subject to criminal prosecution the advocacy and teaching of doctrines (which I understand to be those of the Communist Party) and which a Judge of this Court deemed to be lawful and a proper exercise of the right of freedom of thought and expression.

However, assuming arguendo their validity, I submit the language in which they are drawn is so vague and of such indefiniteness in meaning, that I must represent to this Court that I have no way of ascertaining precisely what it is I am being called upon to do and what it is I am being enjoined from doing.

I am an economist and political analyst. My work involves collating facts on the economic situation and outlook in the United States and abroad as they affect general and political events of the day. This requires research and analysis of social-economic problems, the reporting in writing of my findings and conclusions—and wherever possible

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their publication. I am employed to do this by the Communist Party of the United States.

I do not know what "disassociation" from the Communist Party (or other organizations listed) means. What must I do to "disassociate"? Am I to give up my job—my only source of livelihood?

The regulations direct that I do not "support" or further "the doctrines and policies of the Communist Party." Is [fol. 456] my research, analysis and writings to be considered "activity" in "support" or "furtherance of the doctrines and policies" of the Communist Party (or other listed organizations?) I do not know what would be deemed under the Order, to be Communist Party doctrines and policy. I know, for example, that opposition to discrimination against the Negro people in housing, jobs, schools, etc., is a basic Communist Party doctrine. I also know that this policy and position is advocated and supported by the National Association for the Advancement of Colored People and hundreds of other organizations and individuals. Under the "Order of Supervision" am I proscribed from supporting and furthering such a policy? Does not the same rationale apply to opposing anti-Semitism and fighting for the equal rights of the Jewish people? Or advocating an armistice? —Or, truce in Korea?—Or, urging the repeal of the Smith and McCarran Acts? — Or, any of the innumerable views on social, economic and political problems of the day.

Under said Order, not only must I not support or further the doctrines of the Communist Party, but I must desist similarly from activity in relation to an "affiliate" thereof. No standard or guide is afforded me to determine which organization the defendant does now, or will in the future, deem an "affiliate" of the Communist Party.

Section 7 of the "Order of Supervision" imposes restrictions that would change my whole life, would seriously affect my liberty and deprive me of my earning power.

If I cannot associate with Communists, it means I cannot properly prepare and prosecute my appeal from the Smith Act conviction now pending in the Court of Appeals. My co-defendants, with whom I must consult and collaborate, are, obviously, known members of the Communist Party. This regulation, therefore, is tantamount to a denial of my right to take my appeal.

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[fol 457-487] To disassociate from "Communists" would, as well mean, that I must resign my job and give up social relationships of long standing.

Unless the temporary relief requested in the annexed order to show cause is granted, I will suffer irreparable injury. If I comply or attempt to comply—at my hazard—with the terms of the "Order of Supervision", I will, in effect, imprison myself, be forced to forego my livelihood and lawful social and business relations and cease the preparation of my appeal which is being jointly prosecuted with my ten other co-defendants. If I do not, and cannot comply, I run the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine.

No other demand for the relief requested herein has been made to any other court or judge thereat.

Wherefore, I pray that the relief reqeusted in the annexed "Order to Show Cause" be granted.

Alexander Bittleman.

Sworn to before me this 4th day of August, 1953. Blanch Freedman, Notary Public, State of New York. No. 31-6393650. Qualified in New York County. Certs. filed with N.Y. Co. Clk. & Reg. Commission Expires March 30, 1956.

[fol. 488] AFFIDAVIT OF BLANCH FREEDMAN—Filed August 7, 1953

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CLAUDIA JONES, Plaintiff

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant.

STATE OF NEW YORK,
County of New York, ss.:

BLANCH FREEDMAN, being duly sworn, deposes and says:

I am one of the attorneys for Claudia Jones, the plaintiff in the above-mentioned action and submit this affidavit in

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support of the motion for temporary relief as set forth in the foregoing Order to Show Cause.

The purport of the action is: (A) to secure a declaration as to the validity of (1) Section 242(d) of the Immigration and Nationality Act of 1952; (2) an "Order of Supervision" made against plaintiff on July 31, 1953 pursuant to said Section; (3) the regulations and restrictions upon the conduct of plaintiff incorporated in the said "Order of Supervision"; (B) to direct the defendant to set aside and cancel the said order; and (C) to enjoin and restrain defendant from requiring plaintiff to submit to the said order and its terms and conditions.

This affidavit is made by me as counsel rather than by plaintiff personally because plaintiff is presently convalescing at White Lake Lodge, White Lake, New York, from several attacks of cardiac failure and is not physically available to sign the affidavit.

I make this affidavit upon information and belief. The source thereof is my participation, as counsel for plaintiff in the deportation proceedings and related actions heretofore had herein; conversations had with the plaintiff relative to the contents of the complaint herein and this affidavit; and discussions had with the Immigration and Naturalization Service with regard to the aforesaid "Order of Super-
[fol. 489] vision." Plaintiff has been a legal resident of the United States since February 9, 1924, at which time she entered from the British West Indies at the age of 9 years.

She has been the subject of deportation proceedings since January 19, 1948, when she was served and arrested with a warrant of arrest for deportation. She was immediately released on bail. A final administrative order of deportation was entered therein on October 27, 1952, on the ground that after entry she was a member of the Communist Party of the United States.

She has been enlarged on administrative bail ever since the commencement of the said deportation proceeding against her, except for such times and such conditions as are more specifically set forth in paragraph "Eleventh" of the complaint in this action.

In June of 1951, she was arrested and indicted for conspiracy to violate the Smith Act (18 U.S.C. 2385). She was

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tried before a court and jury in the U. S. District Court for the Southern District of New York, and in February, 1953 was convicted and sentenced to imprisonment for a year and a day. She has appealed from this conviction to the Court of Appeals for the Second Circuit, and presently is preparing and processing her appeal. She has been, since the commencement of the said proceedings, and is presently enlarged on bail in the sum of $20,000.

Plaintiff was born in Trinidad, British West Indies, on February 21, 1915. As stated above, she is under a prison sentence, so that, during the six months following the entry of the final administrative order for her deportation, she could not make any effort to depart from the United States, nor did the Immigration Service make any effort to deport her.

Under Section 242(d) of the Immigration and Nationality Act of 1952, the Immigration Service, by operation of law, has lost its power to detain plaintiff as a matter of "legislative policy in line with constitutional mandates." (Mezei v. Shaughnessy, 195 F. 2nd, 964, 968 rev'd on other grounds, 73 S. Ct. 625).

On July 31, 1953, plaintiff was served with an "Order of Supervision," made, in alleged pursuance of Section 242 (d) of the Immigration and Nationality Act of 1952, by the defendant, under authority granted him by Section 242.3(c) of the Immigration Nationality Regulations (8 C. F. R.). [fol. 490] This order imposes upon her a series of regulations of and restrictions upon her conduct and activity, as more specifically set forth in paragraph "Sixth" of the complaint herein, and Exhibit A annexed thereto.

The supervision exercised over plaintiff herein under the terms and conditions of the order is mere circumvention of the constitution and the law denying to the Attorney General and the defendant the right to imprison her. The physical restrictions upon her movements, the fetters upon her thinking and thoughts, her activities, and her way of making a living are removed from actual imprisonment in degree only, and not in kind or substance.

Since the defendant cannot keep plaintiff in physical custody at a place of detention subjected to his regulations of her conduct, how can it now be demanded that she be subjected in his unlimited discretion, to mental and physical

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examinations. Plaintiff has never been ill wherein she has been unable to take care of herself without becoming a burden or danger to the community. Whenever ill, she has engaged her own physicians, paid for them and been treated as they and she saw fit to cure or alleviate her condition. And as for psychiatric examinations is it now to become the policy of the Immigration Service to lay the ground work for "brain washing" of political dissidents!

Since plaintiff cannot be imprisoned, on what lawful theory may her movements be limited to "a radius of fifty miles from Times Square" or require her to report at Ellis Island every Tuesday of her life? (except as more specifically set forth in Paragraph "Eleventh" of the Complaint herein)—or secure defendant's permission to move from New York State, across the river to New Jersey, or elsewhere? During all times that plaintiff has been at liberty under bond she has been amenable to process, always appearing before governmental authorities as requested and always honoring every condition of her bail bond. No reason exists to believe that she will not continue to do so, and plaintiff represents to this court that she will be available for deportation, or any lawful process or request of the government and, more specifically, of the defendant. Under the circumstances of her lawful employment and lawful normal routine of living, these conditions are harsh, unreasonable and abusive. The requirement of travelling to Ellis Island every Tuesday of her life is not mere inconvenience, it is a physical hardship, a drain upon her [fol. 491] energies, and a serious interference with her job and routine of work. (Plaintiff is presently on sick leave; but if she is forced to terminate her employment, her sick leave will likewise cease)

The "Order of Supervision" imposes upon her a virtual "house arrest," for which there is now lawful authorization. The fact that the boundaries of her "house" encompass "a radius of 50 miles from Times Square" does not negate the fact that the confinement prescribed is jail limits. The size of a house is not the essence of a "house arrest", it is the confinement to a circumscribed area.

The fact of the matter is, as the defendant well knows that in practice, plaintiff does not have the freedom of movement of a 50 mile radius.

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The 50 mile radius proscribed in the order should permit her to go Southeast to Brooklyn and Long Island, West to New Jersey and Northwest to Connecticut. However, when read in conjunction with the jail limits imposed upon her by the District Court for the Southern District of New York the "Order of Supervision," in effect, permits her only to go 50 miles in one direction—due North. Hence, not only is the right to go to Brooklyn, New Jersey and Connecticut illusory, but the jail limits of the court are cut down by about 100 miles since the Southern District extends as far North as Hudson and includes all of Sullivan County —all of which is beyond the 50 mile radius limit of the "Order of Supervision" herein.

The regulations require that plaintiff give "information deemed fit and proper" in the unlimited discretion of the defendant, his representatives or agents. Such a regulation leaves the defendant free to demand of her information which in the present period of hysteria, if given, may be used to incriminate her. Other information may be such as relates to communications to family, doctor or lawyer, all of which *on* one has the legal right to extract from her. The defendant's general unlimited right to demand information is unreasonable in that it could constitute a serious breach of her right to privacy, and might put her in the degrading position of being an informer against other people. Certainly, defendant's power under this order extends to, and yet he has no right, to know, what plaintiff had for breakfast, whether she had an argument with her best friend, what friends she had dinner with, where she [fol. 492] went Saturday night, what she thinks of the municipal elections, the war in Korea, the 15 cents subway fare, or the prospect of an economic depression. Is the Service saying that the heart and mind of an alien is to be an open book any government official—high or petty—to read?

The order further directs her to:

> "(6) Terminate, and remain disassociated from, membership in, if any, support or other activity, of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state, or of any political or

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geographical sub-division of any state, and section, subsidiary, branch, affiliate or sub-division of any such group or organization.

"(7) Refrain from association with any person, knowing or having reasonable ground to believe that such person is a member or affiliated with or is engaged in any promotion of the activities mentioned in Paragraph 6."

Plaintiff stated what she believe- to be the program and activities of the Communist Party before Hon. Edward J. Dimmock, a judge of this court and the trial judge in the Smith Act prosecution against her. She stated, in part:

"How can you decide to mete out justice for the only act to which I proudly plead guilty, and one, moreover, which by your own prior rulings constitutes no crime—that of holding Communist ideas; of being a member and officer of the Communist Party of the United States?

Will you measure, for example, as worthy of one year's sentence my passionate adherence to the idea of fighting for full unequivocal equality for my people, the Negro people, which as a Communist I believe can only be achieved allied to the cause of the working class?

A year for another vital Communist belief, that the bestial Korean war is an unjust war? Or my belief that peaceful co-existence of nations can be achieved and peace won if struggled for?

Another year for my belief that only under socialism will exploitation of man by man be finally abolished and the great human and industrial resources of the nation be harnessed for the wellbeing of the people?

Still another year's sentence for my belief that the denial of the exercise of free speech and thought to Communists only precedes, as history confirms the denial of the exercise of these rights."

• • • • • • •

"It was here on this soil that I early experienced experiences which are shared by millions of native-

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born Negroes—the bitter indignity and humiliation of second-class citizenship, the special status which makes mockery of our Government's prated claims of a "free America" in a "free world" for 15 million Negro Americans.

It was out of Jim Crow experiences as a young Negro woman, experiences likewise born of working-class poverty that led be in my search of why these things had to be that led me to join the young Communist [fol. 493] League and to choose at the age of 18 the philosophy of my life, the science of Marxism-Leninism—that Philosophy that not only rejects racist ideas, but is the antithesis of them."

To this Judge Dimmock replied:

"You have not been convicted or sentenced for the things which you described when you addressed the Court before sentence. You have been convicted of and sentenced for a conspiracy to advocate and teach the duty and necessity of overthrowing and destroying the government of the United States by force and violence. If all that you had done were the things that you described in addressing the Court you would not have been convicted and would not have been sentenced."

Clearly, it is unreasonable to frame a regulation which could prohibit and subject to criminal prosecution the advocacy and teaching of doctrines which plaintiff understands to be those of Communist Party and which a Judge of this Court deemed to be lawful and a proper exercise of the right of freedom of thought and expression.

However, assuming arguendo their validity, the language in which they are drawn is so vague and of such indefiniteness in meaning, that it must be represented to this Court that plaintiff has no way of ascertaining precisely what it is she is being called upon to do and what it is she is being enjoined from doing.

Plaintiff is an employee of the Communist Party. She is the executive Secretary of the National Women's Commission. This involves research, writing articles, and lecturing on the Status, political, social and economic condi-

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tions of women and the preparation of study materials on this subject for members of the Communist Party.

What does "disassociating" from the Communist Party (or other organizations listed) mean? What must plaintiff do to "disassociate"? Must she give up her job—her only source of livelihood?

The regulations directs that she do not "support" or further "the doctrines and policies of the Communist Party." Is her research, and are her writings to be considered proscribed "support" or "activity" in "furtherance of the doctrines and policies" of the Communist Party (or other listed organizations)? Plaintiff does not know what would be deemed, under the order, to be Communist Party doctrine or policy. She knows for example, that opposition to discrimination against the Negro people in housing, jobs, schools, etc., is a basic Communist Party doctrine. She knows that this policy and position is advocated and sup- [fols. 494-508] ported by the National Association for the Advancement of Colored People and hundreds of other organizations and all of the Negro people. Under the "Order of Supervision" is plaintiff proscribed from supporting and furthering such a policy? Would not the same rationale apply to advocating an armistice truce in Korea? —or urging the repeal of the Smith and McCarran Acts or any other of the innumerable views of social, economic and political problems of the day.

Under the said order, plaintiff not only must not support or further the doctrines of the Communist Party, but must desist similarly from activity in relation to an "affiliate" thereof. No standard or guide is afforded her to determine which organization the defendant now, or will in the future, deem an "affiliate" of the Communist Party.

Section 7 of the "Order of Supervision" imposes restrictions that seriously affects her liberty and deprives her of earning power.

If plaintiff cannot associate with Communists, it may mean she cannot properly prepare and prosecute her appeal from the Smith Act conviction now pending in the Court of Appeals. Her co-defendants, with whom she must consult and collaborate, are, obviously members of the Communist Party. This regulations, therefore, is tantamount to a denial of her right to appeal.

To disassociate from "Communists" would, as well mean, that plaintiff must resign her job (and sick leave at the present moment) and give up social relationships of long standing.

Unless the temporary relief requested in the annexed order to show cause is granted, plaintiff will suffer irreparable injury. If she complies or attempts to comply—at her hazard—with the terms of the "Order of Supervision," she will, in effect, imprison herself, be forced to forego her livelihood and sick leave and lawful social and business relations and cease the preparation of her appeal which is being jointly prosecuted with twelve other co-defendants. If plaintiff does not, and cannot comply, she runs the risk of immediate prosecution for a felony, carrying the penalty of one year in prison and $1,000 fine.

No other demand for the relief requested herein has been heretofore made to any other court or judge thereof. The affidavit and complaint herein was read to plaintiff over the telephone on 8/6/53 and this proceeding was authorized in her behalf.

Blanch Freedman.

Sworn to before me this 7th day of August, 1953. Gloria Agrin, Notary Public, State of New York. No. 24-5029100. Qualified in Kings County. Cert. filed with New York Co. Clerks. Cert. filed with Kings & N. Y. Rev. Offices. Term expires March 30, 1954.

[fol. 509] [File Endorsement Omitted]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Civ. 87-98

BETTY GANNETT, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

NOTICE OF MOTION TO DISMISS COMPLAINT—Filed Oct. 1, 1953

MESDAMES:

Please take notice that the undersigned will move this Court at a motion term thereof, to be held in the United States Court House at Foley Square, New York, N. Y., in Room 506 thereof, on October 6, 1953, at 10 A. M. on that date, or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein pursuant to Rule 12(b) (6) and (7), of the Federal Rules of Civil Procedure, on the grounds that the complaint fails to state a claim upon which relief can be granted, and that the said complaint fails to join an indispensable party. A further motion will be made to vacate and dissolve the temporary restraining order herein pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, and for such other and further relief as the Court may deem just and proper.

Dated: New York, N. Y., September 29, 1053.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office & P. O. Address: United States Court House, Foley Square, Borough of Manhattan, City of New York.

To: Blanch Freedman & Gloria Agrin, Attorneys for Plaintiff. Office & P. O. Address: 220 Broadway, New York, N. Y.

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[fol. 510] [File Endorsement Omitted]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Civ. 87-99

ALEXANDER BITTLEMAN, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

NOTICE OF MOTION TO DISMISS COMPLAINT—Filed Oct. 1, 1953

MESDAMES:

PLEASE TAKE NOTICE that the undersigned will move this Court at a motion term thereof, to be held in the United State Court House at Foley Square, New York, N. Y., in Room 506 thereof, on October 6, 1953, at 10 A. M. on that date, or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein pursuant to Rule 12(b) (6) and (7), of the Federal Rules of Civil Procedure, on the grounds that the complaint fails to state a claim upon which relief can be granted, and that the said complaint fails to join an indispensable party. A further motion will be made to vacate and dissolve the temporary restraining order herein pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, and for such other and further relief as the Court may deem just and proper.

Dated: New York, N. Y., September 29, 1953.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office & P. O. Address: United States Court House, Foley Square, Borough of Manhattan, City of New York.

To: Blanch Freedman & Gloria Agrin, Attorneys for the Plaintiff. Office & P. O. Address: 220 Broadway, New York, N. Y.

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[fol. 511] [File Endorsement Omitted]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Civ. 87-124

CLAUDIA JONES, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

NOTICE OF MOTION TO DISMISS COMPLAINT—Filed Oct. 1, 1953

MESDAMES:

PLEASE TAKE NOTICE that the undersigned will move this Court at a motion term thereof, to be held in the United States Court House, Foley Square, New York, N. Y., in Room 506 thereof, on October 6, 1953, at 10 A. M. on that date, or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein pursuant to Rule 12(b) (6) and (7), of the Federal Rules of Civil Procedure, on the grounds that the complaint fails to state a claim upon which relief can be granted, and that the said complaint fails to join an indispensable party. A further motion will be made to vacate and dissolve the temporary restraining order herein pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, and for such other and further relief as the Court may deem just and proper.

Dated: New York, N. Y., September 29, 1953.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office & P. O. Address: United States Court House, Foley Square, Borough of Manhattan, City of New York.

To: Blanch Freedman & Gloria Agrin, Attorneys for Plaintiff. Office & P. O. Address: 220 Broadway, New York, N. Y.

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[fol. 512] [File endorsement omitted]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Civ. 87-98

BETTY GANNETT, Plaintiff

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

Civ. 87-99

ALEXANDER BITTLEMAN, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

Civ. 87-124

CLAUDIA JONES, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

AFFIDAVIT IN OPPOSITION TO MOTIONS FOR TEMPORARY INJUNCTION AND IN SUPPORT OF MOTIONS TO DISMISS—Filed Oct. 14, 1954.

State of New York,
County of New York,
Southern District of New York, ss:

LESTER FRIEDMAN, being duly sworn, deposes and says that he is an attorney in the office of the District Counsel, New York District, Immigration and Naturalization Service, United States Department of Justice, and as such is fa-

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[fol. 513] miliar with the proceedings heretofore had herein. This affidavit is made in opposition to the respective motions of the plaintiffs for a temporary injunction and in support of the defendant's motions to dismiss the complaints on the grounds that such complaints fail to state claims upon which relief may be granted and the further ground that indispensable parties have been omitted from these proceedings though necessary parties thereto.

Although the complaints herein raise primarily issues of law which can be resolved by the Court without consideration of any facts not contained in the record herein, there are some aspects of these cases which require a classification of the facts, for which reason this affidavit is being submitted pursuant to the provisions of Rule 12(b) of the Rules of Civil Procedure which permits the presentation of facts by affidavit in support of a motion to dismiss the complaint for failure to state a claim, and which rule permits the Court to treat such a motion as if it were a motion for summary judgment.

The complaints herein begin with an attack upon the constitutionality of that portion of Section 242(d) of the Immigration and Nationality Act [8 U. S. C. 1252(d)], which provides for the release of deportable aliens when more than six months have elapsed after a final order of deportation on supervised parole under regulations prescribed by the Attorney General and which by statute are directed to include various provisions concerning the alien's appearance, submission to medical examination, giving of information under oath, and conforming to reasonable restrictions [fol. 514] on conduct and activities. The complaints then go on to allege that the regulations promulgated under the statute are equally unconstitutional, and, finally, it is claimed that the enforcement of the statute and regulations is unreasonable and violates the plaintiff's constitutional rights.

It is readily apparent that the allegations and prayer for relief in the respective complaints can be adjudicated on the questions of law presented. However, plaintiffs have accompanied their motions for a temporary injunction with affidavits setting forth scandalous and frivolous allegations of fact based on their absurd predictions as to how the Gov-

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ernment intends to enforce the statute and regulations in question.

With respect to that portion of the statute which authorizes regulations requiring paroled aliens to submit to medical and psychiatric examination at the expense of the United States, if necessary, the plaintiffs have embarked upon a propaganda campaign having no reasonable connection with the law, regulations or manner in which it has been and will be enforced. The plaintiffs herein have been convicted of violation of the Smith Act in connection with conspiracy to overthrow the Government through their connection and activities in the Communist Party. They have also been ordered deported by reason of their membership and activities in behalf of the Communist Party. As can be expected from their fanatical adherence to the communist movement, they are using this action to continue their fantastic out-
[fol. 515] bursts of propaganda. On page 3 of the affidavit of Betty Gannett, verified August 4, 1953, it is claimed that the requirement of psychiatric examination is "now to become the Immigration Service policy to lay the ground work for 'brain washing' of political dissidents." This scandalous allegation closely parallels the propaganda material disseminated by the communists with respect to the Korean prisoners of war. In view of these false assertions, it is felt that the record herein should clearly show the purpose of the statute and the regulations and the manner in which it is being and is intended to be enforced.

The provision of the statute in question which pertains to medical and psychiatric examination of paroled aliens merely places into statutory form matters which have always been within the power of the Attorney General in connection with his general statutory power to deport. Most countries in the world will not accept a deportee without appropriate documents and medical certificates; of course, such requirements vary extensively from country to country. For example, Portugal, Pakistan and various South American countries require deportees to be accompanied by a medical document certifying that the subject has been vaccinated against smallpox; other countries require similar certificates showing vaccination or inoculation against other diseases, such as typhus and cholera, par-

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ticularly when the aliens will be deported through other countries (in transit) wherein such diseases are common or prevalent. No alien could be deported unless the Attorney General has the power to require such alien to submit to medical examination for the purpose of issuing such certificates to accompany him. In addition, it has always been, as it is now, the practice to examine every alien who [fol. 516] is taken into detention for deportation for the alien's own protection and for the protection of other detainees. Obviously, it would be unfair to other detainees to permit an alien with a contagious disease to mingle freely with them at a detention facility To the same extent, the Immigration Service has a responsibility to detainees to protect them from other detainees who may be mentally ill and may become violent. Similarly, an alien who is mentally ill and predisposed to self-destruction must be placed in a position where adequate precaution and restraint may be imposed. If an alien is taken into custody and medically and psychiatrically examined, as aforesaid, he is generally not examined again prior to actual deportation unless such alien complains of illness and needs medical attention, or unless the alien by his conduct indicates some physical or mental illness which requires medical examination and possible treatment.

Finally, it is frequently necessary to examine aliens medically or psychiatrically prior to actual deportation because of the responsibility of the Government to transportation lines who accept such aliens as passengers for deportation; it is also necessary to examine aliens from time to time to ascertain whether they are physically fit to travel and whether such travel may endanger their health so that deportation may be stayed in proper cases. It is equally apparent that transportation lines should not be required to subject other passengers to association with an alien who has a contagious disease. Moreover, transportation lines will not accept a mentally ill passenger as a deportee unless he is accompanied by a medical attendant; the Government [fol. 517] can hardly determine the mental condition of a deportee and the possible necessity of a medical attendant if an examination cannot be conducted prior to embarkation.

It is not, never has been, and is highly unlikely that it

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ever will be the Government's intention to give medical treatment to aliens who are on supervised parole, whether such treatment involves a physical or mental illness. Aliens are only treated at the Government's expense if they happen to be in actual detention; this situation cannot exist in the case of an alien who has been released on supervised parole. A significant and highly pertinent example of the medical examination provision in the statute can be found in one of the cases now before the Court. It should be noted that the order of supervision dated July 31, 1953, in the case of Claudia Jones (copy attached to plaintiff's affidavit and order to show cause), contains a modification in clause (4) so that the subject is required to report in writing rather than in person. An additional provision has also been added in clause (9), permitting that plaintiff to remain at a resort in New York State for the purpose of recuperating from an illness. Thus the requirement for medical examination may become necessary if an alien claims that he is too ill to report or comply with usual provisions of parole; the Immigration Service must, of course, be in a position to verify any claimed illness so that an alien may be excused from any conditions of parole which may interfere with such person's health. Again it is apparent that the conditions of parole in that case were not imposed for any vindictive purpose but solely to carry out the mandate of the statute, to assist in the Government's continued efforts to effectuate ultimate deportation and to protect the security of the United States without unnecessary harshness to the alien.

It is too apparent to require further comment that the [fol. 518] plaintiffs' contentions that they insist on being treated by their own physicians and will not submit to "brain washing" through psychiatric treatment are utter nonsense and undoubtedly stem from the usual Communist Party "line".

Another factual matter has been presented in plaintiffs' supporting affidavits with respect to that portion of the statute here under consideration which requires an alien under supervised parole to give information under oath as to nationality, circumstances, habits, associations and activities, and such other information as the Attorney General

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may deem fit and proper. What becomes glaringly apparent in these cases is that none of the plaintiffs have as yet been required to appear and give any information under that portion of the statute and regulations. Therefore, plaintiffs are hardly in a position to complain concerning any unreasonable requests for information; but this does not stop them. They pretend that possibly, at some future date, some government official may direct them to answer incriminating questions in violation of their constitutional rights. They suggest that the government intends to ascertain their conversations between their spouses, doctors or lawyers; they even go so far as to pretend that the Government will be interested in what they ate for breakfast; what they think of municipal elections, the fifteen cent subway fare, or their predictions of the future economic status of the country. (See p. 4 of the affidavit of Betty Gannett, verified August 4, 1953.) Again, it is apparent that the allegations are fanciful and conjectural and are intended to convey an erroneous impression concerning allegedly harsh enforcement of a statute, when, in fact, no enforcement of such statute has been undertaken. Here, too, we feel that some clarifying information should be furnished to the court.

[fol. 519] In every case known to the undersigned, aliens under supervised parole have been called in to give information concerning themselves primarily because a foreign government has requested additional information in connection with its consideration of the government's application to accept such alien as a deportee. In many cases foreign consuls may ask for additional information concerning the names of an alien's parents, the foreign spelling of the name, the date when he left the foreign country, facts concerning the alien's military services abroad, or any other data which may assist the foreign government in identifying the alien as a national or lawful resident of such country. In addition, many aliens do not wish to return to the country of their nationality and apply as they are permitted to do under the law, for visas to other countries to which they wish to migrate as immigrants. When visa applications are made, the foreign countries frequently request information for their assistance in ruling on the visa applications. If the information is not contained in

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a government record, the alien may be asked to furnish the information to the Immigration Service or directly to the foreign consulate. In addition, it is noted that Section 242(e) of the Immigration and Nationality Act [8 USC 1252(e)] requires certain classes of aliens to make efforts to depart from the United States and to apply for travel documents. In this connection, it may be necessary to ascertain from aliens what efforts they have made along these lines. This court is assured that the government has no interest in what food an alien eats, what private conversa-[fol. 520] tions he has had with his attorney or doctor, or spouse, nor can the government constitutionally require that any alien respond to questions which may tend to incriminate him. Thus it is again apparent that plaintiffs have attempted to create a fictitious monster to which they now point as a basis for raising constitutional questions which are purely academic, have not arisen and are not likely to arise.

Although reference in this affidavit has been made to the supporting affidavit of Betty Gannett, verified August 4, 1953, it is noted that similarly frivolous and scandalous allegations are contained in the affidavit of Alexander Bittleman, verified August 4, 1953, and again repeated in the affidavit of counsel in connection with the motion in behalf of the plaintiff, Claudia Jones, verified by counsel on August 7, 1953.

Wherefore, it is respectfully prayed that plaintiffs' motions for temporary injunctions be denied in all respects and that respondent's motions to dismiss the complaints be granted.

(S.)Lester Friedman, Attorney, Imm. & Nat. Service.

Sworn to before me this 1st day of October, 1953. (S.) Charles M. Lee, Notary Public, State of New York, No. 03-2289850. Qualified in Bronx County. Cert. Filed with Clerks of Bronx and N. Y. Counties and Register's. Term Expires March 30, 1955.

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[fol. 521] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 93-228

BORRIS SKLAR, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

NOTICE OF MOTION TO DISMISS COMPLAINT, ETC.—Filed June 3, 1954

MESDAMES:

Please Take Notice that the undersigned will move this Court at a Motion Term thereof to be held in the United States Court House, Foley Square, New York, N. Y., in Room 506 thereof, on June 8, 1954, at 10:00 A.M. of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein pursuant to Rule 12 (b)(6) and (7) of the Federal Rules of Civil Procedure, on the grounds that the complaint fails to state a claim upon which relief can be granted and that the said complaint fails to join an indispensable party to this action. A further motion will be made to vacate and dissolve the temporary restraining order herein pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Title 28, United States Code, Section 2284(3). Finally, an application will be made for the appointment of a three-Judge Court to hear and determine the matters herein in issue in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, and for such other and further relief as the Court may deem just and proper.

[fol. 522] Dated: New York, N.Y., June 1, 1954.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office & P.O. Address:

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United States Court House, Foley Square, New York 7, N. Y.

To: Blanche Freedman and Gloria Agrin, Esqs., Attorneys for Plaintiff. 220 Broadway, New York, N. Y.

[fol. 523] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 93-285S

MICHAEL NUKK, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

Civ. 93-286S

FRANK BORICH, Plaintiff,

v.

SAME, Defendant

Civ. 93-287S

JOSEPH SIMINOFF, Plaintiff,

v.

SAME, Defendant

Civ. 93-288S

FELIX KUSMAN, Plaintiff,

v.

SAME, Defendant

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Civ. 93-289S

ROSE LIGHTCAP, Plaintiff,

v.

SAME, Defendant

[fol. 524] Civ. 93-290S

IDA GOTTESMAN, Plaintiff,

v.

SAME, Defendant

Civ. 93-291S

ANNA TAFFLER, Plaintiff,

v.

SAME, Defendant

Civ. 93-292S

BENNY SALTZMAN, Plaintiff,

v.

SAME, Defendant

Civ. 93-293S

BESSIE GEISER, Plaintiff,

v.

SAME, Defendant

Civ. 93-294S

MARTIN YOUNG, Plaintiff,

v.

SAME, Defendant

NOTICE OF MOTION TO DISMISS, ETC.—Filed October 15, 1954

MESDAMES:

Please Take Notice that the undersigned will move this Court at a Motion Term thereof to be held in the United

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States Court House, Foley Square, New York, N. Y. in Room [fol. 525] 506 thereof, on June 8, 1954, at 10:00 A.M. of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaints herein pursuant to Rule 12(b)(6) and (7) of the Federal Rules of Civil Procedure, on the grounds that the complaints fail to state a claim upon which relief can be granted and that the said complaints fail to join an indispensable party to these actions. A further motion will be made to vacate and dissolve the temporary restraining orders herein pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Title 28, United States Code, Section 2284(3). Finally, an application will be made for the appointment of a three-Judge Court to hear and determine the matters herein in issue in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, and for such other and further relief as the Court may deem just and proper.

Dated: New York, N. Y., June 4, 1954.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office & P. O. Address: United States Court House, Foley Square, New York 7, N. Y.

To Blanche Freedman and Glorida Agrin, Esqs., Attorneys for Plaintiffs, 220 Broadway, New York, N. Y.

[fol. 526] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

File in Civ. 93-228

Reply Affidavit

Civ. 93-285S

MICHAEL NUKK, Plaintiff,

v.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

Civ. 93-286S

FRANK BORICH, Plaintiff,

v.

SAME, Defendant

Civ. 93-287S

JOSEPH SIMINOFF, Plaintiff,

v.

SAME, Defendant

Civ. 93-288S

FELIX KUSMAN, Plaintiff,

v.

SAME, Defendant

Civ. 93-289S

ROSE LIGHTCAP, Plaintiff,

v.

SAME, Defendant

DARK PAGE

[fol. 527] Civ. 93-290S

IDA GOTTESMAN, Plaintiff,

v.

SAME, Defendant

Civ. 93-291S

ANNA TAFFLER, Plaintiff,

v.

SAME, Defendant

Civ. 93-292S

BENNY SALTZMAN, Plaintiff,

v.

SAME, Defendant

Civ. 93-293S

BESSIE GEISER, Plaintiff,

v.

SAME, Defendant

Civ. 93-294S

MARTIN YOUNG, Plaintiff,

v.

SAME, Defendant

Civ. 93-228S

BORIS SKLAR, Plaintiff,

v.

SAME, Defendant

[fol. 528] AFFIDAVIT OF BLANCH FREEDMAN

STATE OF NEW YORK,

County of New York, ss.:

BLANCH FREEDMAN being duly sworn, deposes and says:

I am one of the attorneys for the plaintiffs in the above entitled action. I am fully cognizant of all the facts and

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proceedings heretofore had herein and I submit this affidavit in opposition to the defendant's motions to vacate the temporary restraining orders duly made and entered herein by Judge Sylvester J. Ryan, in all except the Sklar case, and by Judge David N. Edelstein in the latter.

I respectfully submit to this court that the said stays should be continued *as ordered* pending the hearing and determination of the applications herein for interlocutory judgments. Each restraining order and the affidavit of each plaintiff upon which the said order is predicated, clearly establishes irreparable injury and grievous damage to the property and person of the named plaintiffs. The granting of each restraining order herein represents a finding of these facts and is the considered thinking and judgment of said two judges of this court that plaintiffs, unless relieved as prescribed in said orders, would suffer irreparable harm.[1]

Defendant's motion to vacate is in effect an attempt to reargue the determinations of Judge Ryan and Judge Edelstein. However, the defendant has offered to this court no additional facts to justify or warrant a reversal of the decision of the aforesaid judges. Defendant's motions are unsupported by any shred of evidentiary matter. The plaintiffs' affidavits are uncontested; indeed, defendant has [fol. 529] interposed no affidavits in opposition to plaintiffs' affidavits herein.

Instead, defendant has endeavored merely to interpolate plaintiffs' affidavits and in this somantic exercise has reached conclusions that have no basis in fact. A perusal of the affidavits herein clearly reveals that contrary to the defendant's contention, Judge Ryan and Judge Edelstein had every reason to find that there are grievious deprivations of property rights herein, that the livelihood of the plaintiffs herein are affected and in jeopardy.

The burden of defendant's argument to this court is that the temporary restraining orders irreparably injure the

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[1] Judges Dimock and Weinfeld reached the same conclusion and granted more extensive stays in the similar cases of Gannett, Bittelman, and Jones V. Shaughnessy. (Civ. 87-98; Civ. 87-99; Civ. 87-124).

DARK PAGE

government in that "restraining order places plaintiffs in a position to commit crimes against the United States and urge their right to do so by leave of this Court." (Defendant's Memorandum, p. 16). This is arrant nonsense! No grand jury or United States Attorney has been enjoined from prosecuting these plaintiffs for the commission of any crime.

Furthermore, with respect to the ten restraining orders made by Judge Ryan, paragraphs numbered 6, 7 and 8 (or 5a, b and c) of the Orders of Supervision to which defendant is obviously referring, *have not been restrained.* Hence, the issue as to these ten cases is a false one.

In relation to the plaintiff Sklar, wherein Judge Edelstein did enjoin enforcement of these provisions, the affidavit of Sklar demonstrated a very special situation which the Judge concluded warranted such restraint, and which, in fact, does.

WHEREFORE, it is respectfully submitted that the tem-
[fol. 530] porary restraining orders of Judge Ryan and Judge Edelstein should not be disturbed and that the defendant's motions to vacate said orders be denied.

(S.) Blanch Freedman.

Sworn to before me this eighth day of June, 1954.
(S.) Samuel J. Singer, Notary Public, State of New York, No. 31-9023300. Qualified in New York County. Commission Expires March 30, 1956.

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[fols. 531-532] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 87-98

BETTY GANNETT

v.

EDWARD J. SHAUGHNESSY, District Director of the Immigration and Naturalization Service at the Port of New York, Defendant

NOTICE OF MOTION TO DISMISS, ETC.—Filed June 10, 1954

MESDAMES:

PLEASE TAKE NOTICE that on the complaint herein, and in particular on the basis of paragraph "Seventh" thereof, alleging the unconstitutionality of Section 242(d) of the Immigration and Nationality Act of 1952, and on all the proceedings heretofore had herein, the undersigned will move this Court, at a term for motion thereof, to be held at the United States Court House, Foley Square, New York, New York, in Room 506, on June 15, 1954, at 10:00 A.M. of that day, or as soon thereafter as counsel can be heard, for an order convening a three judge court to hear and determine the matters herein in issue in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, and for such other and further relief as to this Court may appear just and proper. Dated: New York, N. Y., June 9, 1954.

Yours, etc., (S.) J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office and Post Office Address: United States Court House, Foley Square, New York 7, N. Y.

To: Blanche Freedman & Gloria Agrin, Esqs., Attorneys for Plaintiff, 220 Broadway, New York, N. Y.

DARK PAGE BL

[fols. 533-534] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 87-99

ALEXANDER BITTLEMAN

v.

EDWARD J. SHAUGHNESSY, District Director of the Immigration and Naturalization Service at the Port of New York, Defendant

NOTICE OF MOTION TO DISMISS, ETC.—Filed June 10, 1954

MESDAMES:

PLEASE TAKE NOTICE that on the complaint herein, and in particular on the basis of paragraph "Seventh" thereof, alleging the unconstitutionality of Section 242(d) of the Immigration and Nationality Act of 1952, and on all the proceedings heretofore had herein, the undersigned will move this Court, at a term for motion thereof, to be held at the United States Court House, Foley Square, New York, New York, in Room 506, on June 15, 1954, at 10:00 A.M. of that day, or as soon thereafter as counsel can be heard, for an order convening a three judge court to hear and determine the matters herein in issue in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, and for such other and further relief as to this Court may appear just and proper.

Dated: New York, N. Y., June 9, 1954.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office and Post Office Address: United States Court House, Foley Square, New York 7, N. Y.

To: Blanche Freedman and Gloria Agrin, Esqs., Attorneys for Plaintiff, 220 Broadway, New York, N. Y.

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[fols. 535-536] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. 87-124

CLAUDIA JONES

v.

EDWARD J. SHAUGHNESSY, District Director of the Immigration and Naturalization Service at the Port of New York, Defendant

NOTICE OF MOTION TO DISMISS, ETC.—Filed June 10, 1954

MESDAMES:

PLEASE TAKE NOTICE that on the complaint herein, and in particular on the basis of paragraph "Seventh" thereof, alleging the unconstitutionality of Section 242(d) of the Immigration and Nationality Act of 1952, and on all the proceedings heretofore had herein, the undersigned will move this Court, at a term for motion thereof, to be held at the United States Court House, Foley Square, New York, New York, in Room 506, on June 15, 1954, at 10:00 A.M. of that day, or as soon thereafter as counsel can be heard, for an order convening a three judge court to hear and determine the matters herein in issue in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, and for such other and further relief as to this Court may appear just and proper.

Dated: New York, N. Y. June 9, 1954.

Yours, etc., J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant. Office and Post Office Address: United States Court House, Foley Square, New York 7, N. Y.

To: Blanche Freedman and Gloria Agrin, Esqs., Attorneys for Plaintiff, 220 Broadway, New York, N. Y.

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[fol. 537] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 93-285S
Civil 93-286B
Civil 93-287S
Civil 93-288B
Civil 93-289S
Civil 93-290B
Civil 93-291S
Civil 93-292B
Civil 93-293S
Civil 93-294B
Civil 93-228B

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUSMAN, ROSE LIGHTCAP, IDA GOTTESMAN, ANNA TAFFLER, BENNY SALTZMAN, BESSIE GEISER, MARTIN YOUNG, BORIS SKLAR, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service at the Port of New York, Defendant

and

Civil 87-98B
Civil 87-99S
Civil 87-124B

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Immigration and Naturalization Service at the Port of New York, Defendant

ORDER CONVENING THREE-JUDGE COURT—June 21, 1954

Pursuant to the authority vested in me by Title 28, United States Code § 2284, I do hereby designate and constitute

the Statutory Court of three Judges constituted of Hon. Harold R. Medina, Circuit Judge, and Hon. John F. X. McGohey and Hon. Edward Weinfeld, District Court Judges, to hear the above-entitled causes, at such time as may be designated by the said Court.

Harrie B. Chase, Chief Judge of the United States Court of Appeals for the Second Circuit.

Dated: New York, N. Y., June 21st, 1954.

[fol. 538] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 87-98B
Civil 87-99S
Civil 87-124B

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Immigration and Naturalization Service at the Port of New York, Defendant.

ORDER DIRECTING HEARING BY THREE-JUDGE COURT—June 21, 1954

A motion having been made to which no opposition was offered that a Statutory Court be convened pursuant to Title 28, United States Code § 2284, to hear the above-entitled causes, and it appearing that the issues presented therein require the convening of a Statutory Court as provided for by said section and also § 2282 of Title 28, United States Code, and the undersigned having given notice to and requested of the Hon. Harrie B. Chase, Chief Judge of the United States Court of Appeals for the Second Circuit, that he designate such Statutory Court to hear and determine the application made by the plaintiffs herein, and Chief

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Judge Chase having designated the Hon. Harold R. Medina, a Judge of the United States Court of Appeals for the Second Circuit, and the Hon. John F. X. McGohey, a Judge of the United States District Court for the Southern District of New York, and the undersigned, to constitute a Special Court as required by law, and it is hereby

ORDERED that said Judges shall constitute such Court to hear and determine these causes and to act in all matters pertaining thereto as provided by law, and it further ap- [fol 539] pearing that the issues in the above-entitled causes are substantially similar to those presented in Nukk v. Shaughnessy, District Director, Civil 93-285, et al., wherein a Statutory Court has likewise been convened consisting of the same Judges designated to hear the above-entitled causes, it is further

ORDERED that all such causes be heard together and that they be set for argument at the United States Court of Appeals, Room 1705, United States Court House, Foley Square, New York City, on June 30, 1954, at 10:30 A.M. in the forenoon of that day or as soon thereafter as counsel can be heard; and it is further

ORDERED that the Clerk of the United States District Court for the Southern District of New York shall furnish notice of the aforesaid to the Attorney General of the United States, to the United States Attorney for the Southern District of New York, and to the respective parties at least five days prior to the time fixed for said hearing.

Edward Weinfeld, United States District Judge.

Dated: New York, N. Y., June 21, 1954.

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[fol. 540] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 93-285S, 93-286B, 93-287S, 93-288B, 93-289S, 93-290B, 93-291S, 93-292B, 93-293S, 93-294B, 93-228B File

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUSMAN, Rose Lightcap, Ida Cottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

ORDER DIRECTING HEARING BY THREE-JUDGE COURT—June 23, 1954

A motion having been made to which no opposition was offered that a Statutory Court be convened pursuant to Title 28, United States Code § 2284, to hear the above-entitled causes, and it appearing that the issues presented therein require the convening of a Statutory Court as provided for by said section and also § 2282 of Title 28, United States Code, and the undersigned having given notice to and requested of the Hon. Harrie B. Chase, Chief Judge of the United States Court of Appeals for the Second Circuit, that he designate such Statutory Court to hear and determine the application made by the plaintiffs herein, and Chief Judge Chase having designated the Hon. Harold R. Medina, a Judge of the United States Court of Appeals for the Second Circuit, and the Hon. Edward Weinfeld, a Judge of the United States District Court for the Southern District of New York, and the undersigned, to constitute a Special Court as required by law, and it is hereby

ORDERED that said Judges shall constitute such Court to hear and determine these causes and to act in all matters pertaining thereto as provided by law, and it further [fol. 541] appearing that the issues in the above-entitled causes are substantially similar to those presented in

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Gannett v. Shaughnessy, District Director, Civil 87-98, et al., wherein a Statutory Court has likewise been convened consisting of the same Judges designated to hear the above-entitled causes, it is further

ORDERED that all such causes be heard together and that they be set for argument at the United States Court of Appeals, Room 1705, United States Court House, Foley Square, New York City, on June 30, 1954, at 10:30 A.M. in the forenoon of that day or as soon thereafter as counsel can be heard; and it is further

ORDERED that the Clerk of the United States District Court for the Southern District of New York shall furnish notice of the aforesaid to the Attorney General of the United States, to the United States Attorney for the Southern District of New York, and to the respective parties at least five days prior to the time fixed for said hearing.

Dated: New York, N. Y., June 23, 1954.

John F. X. McGohey, United States District Judge.

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[fol. 542] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civil 93-285S, 93-286B, 93-287S, 93-288B, 93-289S, 93-290B, 93-291S, 93-292B, 93-293S, 93-294B, 93-228B

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUSMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

and

Civil 87-98B File, 87-99S, 87-124 B

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Immigration and Naturalization Service of the Port of New York, Defendant

NOTICE OF APPOINTMENT OF THREE-JUDGE COURT—June 23, 1954

SIRS:

Pursuant to the provision of Title 28, United States Code, Section 2284, you are hereby notified that by order of the Honorable Edward Weinfeld, dated June 21, 1954 and by order of the Honorable John F. X. McGohey, dated June 23, 1954, a hearing has been set by a three-judge court composed of Honorable Harold R. Medina, Honorable Edward Weinfeld, and Honorable John F. X. McGohey, for the 30th day of June, 1954, Room 1705, at 10:30 A.M., at the

DARK PAGE BLEE

United States Court House, Foley Square, New York City.
Dated: New York, N. Y., June 23, 1954.

William V. Connell, Clerk of the Court.

[fol. 543] To: Honorable Herbert Brownell, Jr., Attorney General of the United States Department of Justice, Washington 25, D. C.

Honorable J. Edward Lumbard, United States Attorney for the Southern District of New York, United States Court House, Foley Square, New York 7, N. Y.

Blanche Freedman and Gloria Agrin, Attorneys for Plaintiff, 220 Broadway, New York, N. Y.

Form 3806-S (Rev. 2-52)

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Fee paid 30 cents. Class postage

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NOTICE TO SENDER—Enter below name and address of addressee as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Hon. Herbert Brownell Jr.

(Name of addressee) (P. O. and State of address)

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Receipt for Registered Article No. 376240

Postmaster per

Fee paid 30 cents. Class postage

Declared value NV Surcharge paid, $

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Blanche Freedman + Gloria Agrin

(Name of addressee) (P. O. and State of address)

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[Fol. 544] [File endorsement omitted]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Civ. No. 93-285S, 93-286S, 93-287S, 93-288S, 93-289S, 93-290S, 93-291S, 93-22S, 93-293S, 93-294S, 93-228S

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX Kusman, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

Civ. No. 87- 98S.
87- 99S.
87-124S.

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

SUPPLEMENTAL AFFIDAVIT OF LESTER FRIEDMAN—Filed Oct. 15, 1954

State of New York,
County of New York, Southern District of New York, ss.

LESTER FRIEDMAN, being duly sworn, deposes and says that he is the same person who verified the affidavit submitted in the Gannet, Bittelman and Jones cases and makes this affidavit to supplement the information contained therein.

Plaintiffs have attempted to exaggerate the harshness of the parole conditions upon themselves by asserting that they face the continuation of such conditions for the rest of their lives. It is this contention that warrants responsive com- [fol. 545] ments.

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First it should be pointed out that plaintiffs need continue to comply with the conditions of supervised parole only as long as they remain in the United States and that the burden to depart and to make efforts to depart is upon plaintiffs. In fact, it is a violation of the penal provisions of Section 242(e) to fail to depart or to make timely application in good faith for travel documents. The latter statute has already been upheld as constitutional by the United States Supreme Court in the *Spector* case, cited on page 39 of the defendant's brief. Thus, it is apparent that plaintiffs may readily terminate their supervised parole by merely departing from the United States as they are required to do by law. Of course, they contend that no country will accept them. With this contention we also disagree.

It has been the experience of the Immigration and Naturalization Service that the so called "iron curtain" countries readily and consistently accept subversive deportees when it serves the mutual purpose of the alien and the foreign government involved. It is apparent that the question of which alien is accepted and which alien is refused is a pure matter of collusive action between the alien and the government involved. For example, Russia has actually accepted two deportees in recent years to the knowledge of the undersigned; Poland has accepted a large number of deportees and smaller numbers have been accepted by almost all of the satellite countries of Soviet Russia. In each case wherein the alien was accepted, such alien has actually wanted to depart and has had some strong motivation to depart. Again, to cite examples, Gerhardt Eisler escaped from the United States to avoid criminal prosecution and was accepted; other cases which have reached the Courts such as *Figueiredo* and *Harisiades* were accepted because they were deportable to anti-communist countries and appar- [fols. 546-554] ently did not wish to risk possible prosecution for subversive activities in such countries.

Finally, it need only be pointed out as Judge Dimock stated in the case of *U. S. ex. rel. Blankenstein* v. *Shaughnessy*, S. D. N. Y., Dec. 2, 1953, Civ. 86-311, that it cannot be known what agreement or arrangements of an international nature can be made in the future or in the immediate future for the acceptance of deportees such as the plaintiffs. To assume that plaintiffs will never be deported would be

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as erroneous as the assumption that they will all be deported tomorrow. Such considerations are within the realm of pure prophecy and speculation and should not enter the deliberations of this Court.

Lester Friedman.

Sworn to before me this 30th day of June, 1954. Charles M. Lee, Notary Public, State of New York, No. 03-2289850. Qualified in Bronx County. Cert. Filed with Clerks of Bronx and N. Y. Counties and Register. Term Expires March 30, 1955.

[fols. 555-556] [File endorsement omitted]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NUKK et al, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, etc., Defendant.

NOTICE OF SETTLEMENT AND ORDER MODIFYING TEMPORARY RESTRAINING ORDER—July 27, 1954

SIR:

PLEASE TAKE NOTICE that the within counter-order will be presented for settlement and signature to the Honorable Harold Medina, United States Circuit Judge, at the office of the Clerk, Room 601, United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 22nd day of July, 1954, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated: New York, N. Y.
July 21, 1954

Yours, etc., Blanch Freedman & Gloria Agrin, Attorneys for plaintiffs, 220 Broadway, Borough of Manhattan, City of New York.

To: J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Defendant, Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

DARK PAGE E

[fol. 557] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. No. 93-285 S, 93-286 B, 93-287 S, 93-288 B, 93-289 S, 93-290 B, 93-291 S, 93-292 B, 93-293 S, 93-294 B, 93-228 B

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUSMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

ORDER

The plaintiffs having moved by orders to show cause for temporary injunctions against the defendant in these actions; and the Court having issued a temporary restraining order against the defendant on May 25, 1954, restraining the defendant from requiring the plaintiff, Sklar, to submit to supervision as required by the "Order of Supervision" made by the defendant against him; and the Court having issued temporary restraining orders against the defendant on June 2, 1954 restraining the defendant from [fol. 558] requiring the plaintiffs, Nukk and nine others, to submit to supervision as required by paragraphs 2 and 4 of the "Orders of Supervision" made by the defendant against them; and the defendant having moved to dismiss the complaints in these actions and having made an application to vacate the said restraining orders herein; and the said application of the defendant having come on to be heard before a statutory court duly convened pursuant to the provisions of Title 28, United States Code, Section 2284 on June 30, 1954; and J. Edward Lumbard, United States Attorney for the Southern District of New York [Harold R. Tyler, Jr., Assistant United States Attorney, of counsel), attorney for the defendant, having been heard in support of the defendant's application to vacate the outstanding temporary restraining orders, and Blanch Freedman and Gloria Agrin, Attorneys for plaintiffs, hav-

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ing been heard in opposition thereto, and due deliberation having been had thereon, and upon all the proceedings heretofore had herein, it is, pending the determination of the plaintiffs' motions for temporary injunctions and the defendant's cross motions to dismiss the complaint herein,

ORDERED that the defendant's application to vacate the aforesaid temporary restraining orders is denied, except that

(1) the defendant shall not be restrained from enforcing Paragraph 2 of the said "Orders of Supervision" to the extent that the plaintiffs may be required to submit to medical or psychiatric examination if it is necessary to effectuate deportation arrangements or if it is necessary to verify any claimed disability upon which the plaintiffs, or any of them, may make administrative application for a modification of any other [fol. 559] of the conditions of the said "Orders of Supervision" by reason of an alleged physical inability to comply therewith; and

(2) the defendant shall not be restrained from enforcing Paragraph 4 of the said "Orders of Supervision" to the extent that the plaintiffs may be required to report in person not more than once per month to the officer in charge of the Immigration and Naturalization Service at Ellis Island, New York Harbor;

and it is further

ORDERED that the defendant may administratively amend the said "Orders of Supervision" to conform to this order.

Dated: New York, N. Y., July 27, 1954.

John F. X. McGohey, U. S. C. J.

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[fol. 560] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. No. 93-285 S, 93-286 B, 93-287 S, 93-288 B, 93-289 S, 93-290 B, 93-291 S, 93-292 B, 93-293 S, 93-294 B, 93-228 B

MICHAEL NUKK, FRANK BORACH, JOSEPH SIMINOFF, FELIX KUSMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

Civ. No. 87-98 B, 87-99 S, 87-124 B

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

DECISION AND ORDER OF THREE-JUDGE COURT—October 11, 1954

Before: Medina, Circuit Judge, and McGohey and Weinfeld, District Judges

Blanch Freedman & Gloria Agrin, Attorneys for Plaintiffs.

J. Edward Lumbard, United States Attorney, Attorney for Defendant; Harold R. Tyler, Jr., Harold J. Raby, Assistant United States Attorneys and Lester Friedman, Attorney, Immigration and Naturalization Service, of Counsel.

[fol. 561] MEDINA, Circuit Judge:

The pleadings and issues in the fourteen actions before us are substantially the same. Each of the plaintiffs is an

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alien who has been ordered deported from the United States after appropriate administrative proceedings which none has sought to review by any judicial proceeding. The order of deportation in each case was based on an administrative finding that, after entering the United States, the plaintiff had been a member of the Communist Party of the United States. Final orders and warrants for the deportation of each of the plaintiffs have been outstanding for more than six months.

Three of the plaintiffs, namely, Gannet, Bittleman and Jones, have not been deported primarily because they were tried and convicted of violations of the penal provisions of the Smith Act for conspiring to advocate the overthrow of the United States Government by force and violence. These plaintiffs have been sentenced to various terms of imprisonment and are now at liberty on judicial bond pending their appeals in the criminal action. With respect to the other eleven plaintiffs, they have not been deported by reason of the inability of the immigration authorities physically to effectuate deportation. Some of the plaintiffs are so-called "stateless persons"; others have been denied, temporarily at least, readmittance to the countries of their nativity or last residence prior to coming to the United States.

Since more than six months have elapsed from the entry of the final orders of deportation, the defendant has re- [fols. 562-565] leased the plaintiffs from custody on supervised parole in accordance with the express provisions of Section 242(d) of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1252(d),[1] and the regulations promulgated

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[1] Section 242(d) of the Immigration and Nationality Act of 1942, 8 U. S. C. § 1252(d), provides as follows:

"(d) *Supervision of deportable alien; violation by alien.*

Any alien, against whom a final order of deportation as defined in subsection (c) of this section, heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include pro-

thereunder, 8 C. F. R. § 242.3(c),[2] the constitutionality of which plaintiffs now seek to attack.

As may be seen, the regulations which have been promul-

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visions which will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction be guilty of a felony, and shall be fined not more than $1,000 or shall be imprisoned not more than one year, or both."

[2] 8 C. F. R. § 242.3(c) provides as follows:

"(c) *Release; supervision after six months' period has expired; warning of penal provisions.*

An alien against whom an order of deportation has been outstanding for more than six months shall, pending deportation, be placed under supervision by the district director, deputy district director, district enforcement officer, or officer in charge having administrative jurisdiction over the office in which the detention or release of such alien was authorized. An alien placed under supervision pursuant to this paragraph shall be advised of the penal provisions of section 242 (d) of the Immigration and Nationality Act. Aliens placed under such supervision shall, among other things, be required to:

(1) Appear from time to time at specified times or

gated under Section 242(d) of the Immigration and Nationality Act of 1952 closely follow the statutory language. Likewise, the orders of supervision pursuant to which the plaintiffs were released from custody on supervised parole substantially follow the language of the statute and the regulations, with the exception of certain restrictions with respect to plaintiffs' activities.[3] Although all of the plaintiffs have been notified by the defendant of the conditions of

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intervals before an officer of the Service for identification;

(2) Submit, if necessary, to medical and psychiatric examination at government expense;

(3) Give information under oath as to his nationality, circumstances, habits, associations and activities, and other information whether or not related to the foregoing as may be deemed fit and proper; and

(4) Conform to such reasonable written restrictions on his conduct or activities as may be prescribed."

[3] The orders of supervision regulated and restricted the conduct and activity of each of the plaintiffs substantially as follows:

"Therefore, it is hereby ordered that such alien shall be placed under supervision and permitted to be and to remain at large upon the following terms:

(1) That said alien shall produce himself, at time and place designated, for deportation pursuant to the order of deportation.

(2) That said alien shall upon request produce himself at a time and place designated for the purpose of submitting to medical and psychiatric examination and/or to furnish such information as may be deemed fit and proper.

(3-a) That said alien shall notify the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) hereof of any change in residence or employment, within the immigration district, within 48 hours after change is made.

(3-b) That said alien shall apply to the Officer in Charge of the Immigration and Naturalization Service at the address shown in (4) for permission to change

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their parole under Section 242(d), they have refused to sign the written orders of supervision, copies of which are attached to their respective complaints.

Since the time of the plaintiffs' release from the custody of the defendant on supervised parole, no action of any kind with respect to any of the plaintiffs has been taken or threatened by the defendant. Moreover, as will be shown later in this opinion, the defendant has no authority to take any further action.

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place of residence from one immigration district to another, at least 48 hours prior to such change.

(4) That said alien shall report in (Person) on Thursday of each week, bet. 8:45 A. M. & 3:45 P. M. to the Officer in Charge of the Immigration and Naturalization Service at Ellis Island, New York Harbor, N. Y.

(5)(a) That said alien shall terminate and remain disassociated from, membership in, if any, support or other activity, if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state, or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate, or subdivision of any such group or organization.

(b) That such alien shall refrain from 'associating' with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in subparagraph (a) above, provided that the term 'associating' as used in this subparagraph shall not be construed to include members of such alien's family or professional legal counsel if such associations are not used in furtherance of the doctrines, policies, or activities of any of the organizations or activities mentioned in subparagraph (a).

(c) That said alien shall not violate Sec. 2385 of the 'Smith' Act of June 25, 1948 Section 2385 of Title 18, U. S. Code) and Section 4 of the Internal Security Act of September 23, 1950 (Sec. 783 of Title 50, U. S. Code).

(6) That said alien shall not travel outside a radius of

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Following the issuance of the orders of supervision, the plaintiffs commenced these actions in this Court, each respectively seeking a declaratory judgment and injunctive relief. The complaints ask that a declaratory judgment be made and entered declaring that Section 242(d) of the Immigration and Nationality Act of 1952, the regulations [fol. 566] promulgated thereunder, and the orders of supervision issued against the plaintiffs, are all "unconstitutional, invalid, illegal, void and inoperative," and declaring that the particular provisions of the orders of supervision "are unreasonable and an abuse of discretion." The complaints further demand that an order be made and entered directing the defendant to set aside and cancel the orders of supervision, and that the defendant be enjoined from requiring the plaintiffs to obey the conditions of their supervised parole as contained in the orders of supervision.

The plaintiffs have moved, by means of orders to show cause issued at the same time the various complaints were filed, for temporary injunctions against the defendant pending the hearing and determination of the actions. In all cases, temporary restraining orders were issued by single judges of this Court, relieving plaintiffs from any obligation of compliance with the varying provisions of the orders of supervision, pending the hearing and determination of the plaintiffs' motions for temporary injunctions.

The defendant has cross-moved with respect to all fourteen complaints, asking the Court for an order (1) dismissing all of the complaints herein, pursuant to Rule 12(b) of the Rules of Civil Procedure, for failure to state claims upon which relief can be granted and for failure to join an indispensable party; (2) vacating and dissolving the tempo-

50 miles from Times Square, New York, N. Y. without written permission of an appropriate officer of the Immigration & Naturalization Service, New York District."

The orders of supervision vary in certain unimportant respects, *e. g.*, in the numbering of the regulatory provisions, in the days on which each plaintiff is required to report, as to whether each plaintiff is to report in writing or in person, and, in some instances, the travel limitation of 50 miles is omitted.

rary restraining orders herein pursuant to Rule 65(b) of the Rules of Civil Procedure and Title 28, United States Code, Section 2284(3); and (3) appointing a three-judge Court, in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, to hear and determine [fol. 567] the matters herein in issue.

The plaintiffs' attorneys offered no opposition to the defendant's application for the appointment of a three-judge Court, and, accordingly, on June 21, 1954, this statutory Court was designated in accordance with the appropriate provisions of Title 28, United States Code, Section 2284. All of these actions, including the various motions, were heard together on June 30, 1954, pursuant to orders of this Court, dated June 21, 1954, and June 23, 1954, respectively, and extensive arguments were made by counsel for both sides. On July 27, 1954, the temporary restraining orders referred to above were modified in certain similar respects by an order of this Court, and, as so modified, continue to be outstanding against the defendant in all the cases.

The position of plaintiffs is untenable principally because there is no justiciable controversy between the parties. It is fundamental to declaratory judgment actions that there be an actual and existing dispute upon which the adjudicatory powers of the court can operate;[4] and it has long been settled law that the constitutional powers of the federal courts do not give them competence to render advisory opinions. And yet that is precisely what plaintiffs here would have us do.

The District Director is a subordinate official who has no power to take any further action with respect to these plaintiffs beyond what he has already done. His authority ceased with the issuance of the orders of supervision and the release of plaintiffs from custody on supervised parole. Nor is it claimed or alleged in any of the complaints that the [fols. 568-569] District Director has in any manner threatened to take further action against plaintiffs or any of them.

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[4] *Massachusetts* v. *Missouri*, 308 U.S. 1, 17 (1939); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 272 (1941).

Nowhere is it alleged that any of the plaintiffs has violated the terms of the statute under attack. A wilful failure to comply with the regulations issued under Section 242(d) is a penal offense punishable upon conviction by imprisonment and fine. Thus if they refuse to comply with the conditions of their parole, it is the Attorney General or the United States Attorney for the district in which the parole conditions will have been violated who will determine whether or not plaintiffs or any of them should be prosecuted. For aught that now appears there may be no actual prosecution of any of these plaintiffs, and the factual background indispensable to the determination of any such prosecution, should it take place, is in futuro and as yet non-existent.

The principle involved here is, in substance, the same as that reaffirmed by the Supreme Court in *United Public Workers of America (C. I. O.)* v. *Mitchell*, 330 U. S. 75 (1947). There, certain employees of the executive branch of the Federal Government and a union of such employees sued to enjoin the members of the Civil Service Commission from enforcing the provision of Section 9(a) of the Hatch Act which forbade such employees to take "any active part in political management or in political campaigns" and for a declaratory judgment holding the Act unconstitutional. In denying declaratory relief to all but one of the employees, on the ground that they had failed to present a justiciable controversy, the Court pointed out that these employees did not allege that they had violated the Act, or that the Commission had actually threatened to interfere with their rights, but only that they desired to engage in acts of political management and in political campaigns and understood that if they engaged in this activity the Commission would [fol. 570] order their dismissal from federal employment. A consideration of these factors compelled the Court to conclude that these employees "seem[ed] clearly to seek advisory opinions" as to whether or not they could "act contrary to the rule against political activity." As to these employees, the Court stated (pp. 89-90):

> "As is well known, the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues, 'concrete legal issues, presented in actual

cases, not abstractions,' are requisite. This is as true of declaratory judgments as any other field. These appellants seem clearly to seek advisory opinions upon broad claims of rights protected by the First, Fifth, Ninth and Tenth Amendments to the Constitution. * * * [T]he facts of their personal interest in their civil rights, of the general threat of possible interference with those rights by the Civil Service Commission under its rules, if specified things are done by appellants, does not make a justifiable case or controversy.

* * * * * * *

The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough."

The Court decided that one employee, Poole, was entitled to a declaratory judgment, as his suit presented a justiciable controversy. In so deciding, the Court pointed out that Poole admitted that he had violated the Act, that he had been charged by the Commission with political activity, and that a proposed order for his removal had been issued by the Commission subject to his right to reply to the charges and to present further evidence in refutation.

Here, the lack of any actual and existing controversy between the parties plaintiff and defendant is too clear for [fol. 571] reasonable debate, as defendant is not now nor will he ever be charged with the duty of enforcing this criminal statute.

Accordingly, the complaints are dismissed, plaintiffs' motions denied, and the temporary restraining orders vacated.

Dated: October 11th, 1954.

Harold M. Medina, United States Circuit Judge,
John F. X. McGohey, United States District Judge,
Edward Weinfeld, United States District Judge.

[fol. 572] [File endorsement omitted]

Civil 93-285, 93-286, 93-287, 93-288, 93-289, 93-290, 93-291, 93-292, 93-293, 93-294, 93-228

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MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUZMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of The Immigration and Naturalization Service of the Port of New York, Defendant

Civil 87-98, 87-99, 87-124

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of The Immigration and Naturalization Service of the Port of New York, Defendant

JUDGMENT—December 1, 1954

The plaintiffs having each filed a complaint against the defendant for judgment, pursuant to 5 U.S.C.A. § 1009 and 8 U.S.C.A. § 1329:(1) declaring that Section 242(d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252 (d)], the rules and regulations [8 C.F.R. § 242.3(c)] promulgated thereunder and the Orders of Supervision made and issued with respect to each of the plaintiffs are uncon- [fol. 573] stitutional, invalid, illegal, void and inoperative; (2) declaring that particular provisions of each of the said Orders of Supervision are unreasonable and an abuse of power; and (3) requesting that the defendant be enjoined from requiring the plaintiffs to comply with the conditions of their respective Orders of Supervision; and the plaintiffs Michael Nukk, Frank Borich, Joseph Simonoff, Felix Kuzman, Rose Lightcap, Ida Gottesman, Anna Taffler,

Benny Saltzman, Bessie Geiser and Martin Young each having moved by an order to show cause dated June 2, 1954; and the plaintiff Boris Sklar having moved by an order to show cause dated May 25, 1954; and the plaintiffs Betty Gannett and Alexander Bittleman each having moved by an order to show cause dated August 5, 1953; and the plaintiff Claudia Jones having moved by an order to show cause dated August 7, 1953, for temporary injunctions against the defendant pending the hearing and determination of the said actions and for temporary restraining orders pending the hearing and determination of the respective orders to show cause; and the Court having granted temporary restraining orders with respect to paragraphs 2 and 4 of the Orders of Supervision relating to the plaintiffs Nukk, Borich, Siminoff, Kuzman, Lightcap, Gottesman, Taffler, Saltzman, Geiser and Young; and with respect to all of the paragraphs of the Order of Supervision relating to the plaintiff Sklar; and with respect to paragraphs 2, 4, 5, 6 and 7 of the Orders of Supervision relating to plaintiffs Gannett, Bittleman and Jones; and the defendant having cross-moved with respect to all fourteen complaints for an order (1) dismissing all of the complaints herein, pursuant to Rule 12(b) of the Rules of Civil Pro-
[fol. 574] cedure, for failure to state claims upon which relief can be granted and for failure to join an indispensable party; (2) vacating and dissolving the temporary restraining orders; and (3) appointing a three-judge Court, in accordance with the provisions of Title 28, United States Code, Sections 2282 and 2284, to hear and determine the matters herein in issue; and by orders dated June 21, 1954 and June 23, 1954 there having been designated a three-judge statutory Court pursuant to said sections, composed of the Hon. Harold M. Medina, a Judge of the United States Court of Appeals for the Second Circuit and the Hon. John F. X. McGohey and Hon. Edward Weinfeld, Judges of the United States District Court for the Southern District of New York; and the said motions having come on to be heard jointly before the said three-judge Court on June 30, 1954; and the Court having rendered a decision on October 11, 1954 ordering that the complaints herein be dismissed; that the plaintiffs' motions for tem-

porary injunctive relief be denied; and that the above-mentioned temporary restraining orders be vacated; now in accordance with said decision, it is,

ORDERED AND ADJUDGED that each of the above-entitled complaints be and they hereby are dismissed, that each of plaintiffs' aforesaid motions for temporary injunctions shall be and hereby are denied, and that each of the temporary restraining orders described hereinabove shall be and hereby are vacated, and it is.

FURTHER ORDERED AND ADJUDGED that the defendant in each of the aforesaid actions, Edward J. Shaughnessy, shall recover judgment against each of the plaintiffs for his costs and disbursements as taxed in the following amounts:

[fol. 575] *Action*	*Civil No.*	*Costs*
Nukk v. Shaughnessy	93-285	$20.00
Borich v. Shaughnessy	93-286	$20.00
Siminoff v. Shaughnessy	93-287	$20.00
Kuzman v. Shaughnessy	93-288	$20.00
Lightcap v. Shaughnessy	93-289	$20.00
Gottesman v. Shaughnessy	93-290	$20.00
Taffler v. Shaughnessy	93-291	$20.00
Saltzman v. Shaughnessy	93-292	$20.00
Geiser v. Shaughnessy	93-293	$20.00
Young v. Shaughnessy	93-294	$20.00
Sklar v. Shaughnessy	93-228	$20.00
Gannett v. Shaughnessy	87-98	$20.00
Bittleman v. Shaughnessy	87-99	$20.00
Jones v. Shaughnessy	87-124	$20.00

and that said defendant have execution for said costs and disbursements as taxed.

Dated: New York, N. Y., December 1, 1954.

Harold R. Medina, United States Circuit Judge,
John F. X. McGohey, United States District Judge,
Edward Weinfeld, United States District Judge.

Judgment entered:
Dec. 1, 1954.

William V. Connell, Clerk.

[fol. 575a] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. No. 93-285 B
Civ. No. 93-286 B
Civ. No. 93-287 B
Civ. No. 93-288 B
Civ. No. 93-289 B
Civ. No. 93-290 B
Civ. No. 93-291 B
Civ. No. 93-292 B
Civ. No. 93-293 B
Civ. No. 93-294 B
Civ. No. 93-228 B

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUZMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

Civ. No. 87-98 B File
Civ. No. 87-99 B
Civ. No. 87-124 B

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Dec. 7, 1954

I. Notice is hereby given that the plaintiffs above-named hereby appeal to the Supreme Court of the United States from the final order and judgment dismissing the com-

[fol. 576] plaints herein and denying the plaintiffs' motions for temporary injunctions, entered herein, respectively, on October 11, 1954 and December 1, 1954.

This appeal is taken pursuant to 28 U.S.C.A. §2101.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. In the action entitled *Michael Nukk* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-285):

(a) the complaint;
(b) the affidavit of Michael Nukk in support of the Order to Show Cause therein;
(c) the Order to Show Cause; therein;

2. In the action entitled *Frank Borich* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-286):

(a) the complaint;
(b) the affidavit of Frank Borich in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

3. In the action entitled *Joseph Simonoff* v. *Edward J. Shaughnessy, etc.* (Civ. 93-287):

(a) the complaint;
(b) the affidavit of Joseph Simonoff in support of the [fol. 577] Order to Show Cause therein;
(c) the Order to Show Cause.

4. In the action entitled *Felix Kuzman* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-288):

(a) the complaint;
(b) the affidavit of Felix Kuzman in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

5. In the action entitled *Rose Lightcap* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-289):

(a) the complaint;
(b) the affidavit of Rose Lightcap in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

6. In the action entitled *Ida Gottesman* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-290):

(a) the complaint;
(b) the affidavit of Ida Gottesman in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

7. In the action entitled *Anna Taffler* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-291):

(a) the complaint;
(b) the affidavit of Anna Taffler in support of the [fol. 578] Order to Show Cause therein;
(c) the Order to Show Cause.

8. In the action entitled *Benny Saltzman* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-292):

(a) the complaint;
(b) the affidavit of Benny Saltzman in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

9. In the action entitled *Bessie Geiser* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-293):

(a) the complaint;
(b) the affidavit of Bessie Geiser in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

10. In the action entitled *Martin Young* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-294):

(a) the complaint;
(b) the affidavit of Martin Young in support of the Order to Show Cause therein;

(c) the Order to Show Cause.

11. In the action entitled *Boris Sklar* v. *Edward J. Shaughnessy, etc.* (Civ. No. 93-228):

(a) the complaint;
(b) the affidavit of Boris Sklar in support of the [fol. 579] Order to Show Cause therein;
(c) the Order to Show Cause.

12. In the action entitled *Betty Gannett* v. *Edward J. Shaughnessy, etc.* (Civ. No. 87-98):

(a) the complaint;
(b) the affidavit of Betty Gannett in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

13. In the action entitled *Alexander Bittleman* v. *Edward J. Shaughnessy, etc.* (Civ. No. 87-99):

(a) the complaint;
(b) the affidavit of Alexander Bittleman in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

14. In the action entitled *Claudia Jones* v. *Edward J. Shaughnessy, etc.* (Civ. No. 87-124):

(a) the complaint;
(b) the affidavit of Claudia Jones in support of the Order to Show Cause therein;
(c) the Order to Show Cause.

15. Separate Notices of Motion, dated September 29, 1953, to dismiss the complaint and to vacate the temporary [fol. 580] restraining order, under the respective captions:

(a) *Gannett* v. *Shaughnessy;*
(b) *Bittleman* v. *Shaughnessy;*
(c) *Jones* v. *Shaughnessy.*

16. Affidavit of Lester Friedman, dated October 1, 1953, under the caption *Gannett (and two others)* v. *Shaughnessy,*

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in opposition to plaintiffs' motions for a temporary injunction and in support of defendant's motion to dismiss.

17. Notice of Motion, dated June 1, 1954, under the caption *Sklar* v. *Shaughnessy*, to dismiss the complaint, vacate the temporary restraining order, and appoint a three-judge court.

18. Notice of Motion, dated June 4, 1954, under the caption *Nukk (and nine others)* v. *Shaughnessy*, to dismiss the complaints, vacate the temporary restraining orders and appoint a three-judge court.

19. Affidavit of Blanch Freedman, dated June 8, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy*, in opposition to defendant's motion to vacate the temporary restraining orders.

20. Separate Notices of Motion, dated June 9, 1954, to dismiss the complaints, vacate the temporary restraining orders and appoint a three-judge court under the respective captions:

(a) *Gannett* v. *Shaughnessy;*
(b) *Bittleman* v. *Shaughnessy;*
(c) *Jones* v. *Shaughnessy.*

[fol. 581] 21. Order of Hon. Harrie B. Chase, Circuit Judge, dated June 21, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy* and *Gannett (and two others)* v. *Shaughnessy* designating a three-judge court.

22. Order of Hon. Edward J. Weinfeld, dated June 21, 1954, under the caption *Gannett (and two others)* v. *Shaughnessy*, directing a hearing by the three-judge court.

23. Order of Hon. John F. X. McGohey, dated June 23, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy*, directing a hearing by the three-judge court.

24. Notice, Dated June 23, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy*, and *Gannett (and two others)* v. *Shaughnessy*, of appointment of three-judge court and of the date of hearing.

25. Affidavit of Lester Friedman, dated June 30, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy*, and *Gannett (and two others)* v. *Shaughnessy*, to supplement the prior affidavit submitted in *Gannett (and two others)* v. *Shaughnessy.*

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26. Order of Hon. John F. X. McGohey, dated July 27, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy,* modifying the temporary restraining orders.

27. Decision and order of the three-judge court dated October 11, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy* and *Gannett (and two others)* v. *Shaughnessy.*

[fol. 582] 28. Judgment of the three-judge Court, dated December 1, 1954, under the caption *Nukk (and ten others)* v. *Shaughnessy* and *Gannett (and two others)* v. *Shaughnessy.*

29. Notice of Appeal herein under the caption *Nukk (and ten others)* v. *Shaughnessy* and *Gannett (and two others)* v. *Shaughnessy.*

III. The following questions are presented by this appeal:

1. Whether the Court erred in its determination that there was no actual and existing controversy between the parties plaintiff and defendant.

(a) Whether an action under the Administrative Procedures Act, 5 U.S.C.A. § 1009, by a party to whom a final administrative order, embodying specific directives, has been issued, against the administrative officer who issued the order, for judicial review of that order in the form of proceeding authorized by 5 U. S. C. A. § 1009(b), presents a case or controversy between the parties within the meaning of Article III, § 2 of the United States Constitution.

(b) Whether an action for declaratory judgment, by a party to whom a final administrative order, embodying specific directives, has been issued, against the administrative officer who issued the order, presents a case or controversy between the parties within the meaning of Article III, § 2 of the United States Constitution, although sanctions for violation of the order may be imposed only by criminal process.

(c) Whether, in the action set forth in (b) above, the party plaintiff is entitled to temporary of permanent auxiliary equitable relief from the order, where it is shown that compliance with the order has or will

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deprive the plaintiff of liberty, property and civil rights and that violation of the order would subject the plaintiff to multiple criminal penalties.

[fol. 583] (d) Whether an action for injunction or mandamus, by a party to whom a final administrative order, embodying specific directives, has been issued, against the administrative officer who issued the order, to relieve the plaintiff from the obligations imposed upon him by the order, presents a case or controversy between the parties within the meaning of Article III, § 2 of the United States Constitution, although sanctions for violation of the order may be imposed only by criminal process.

(e) Whether, in the action set forth in (d) above, it is a proper exercise of the court's discretion to grant relief, once the order—creating obligations, compliance with which deprives the plaintiff of liberty, property and civil rights and violation of which subjects him to multiple criminal penalties—is issued, although no violation of its terms has been committed and no criminal prosecution has been specifically threatened or begun.

2. Whether Section 242 (d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252(d)], on its face and as applied herein, is unconstitutional, invalid and void, in that:

(a) Said section, on its face, deprives the plaintiffs of procedural due process of law in violation of the Fifth Amendment to the United States Constitution.

(b) Said section, as applied, is a bill of attainder and ex post facto law in violation of Article 1, § 9 of the United States Constitution.

(c) Said section, on its face and as applied, deprives the plaintiffs of liberty and property without due process of law in violation of the Fifth Amendment to the United States Constitution.

(d) Said section, on its face and as applied, imposes punishment upon the plaintiffs in violation of the Fifth and Eighth Amendments to the United States Constitution.

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[fol. 584] (e) Said section, on its face and as applied, deprives the plaintiffs of the equal protection of the laws, in violation of the Fifth Amendment to the United States Constitution.

(f) Said section unlawfully delegates legislative power to the Attorney General of the United States, his representatives, agents and employees, in violation of Article I, § 1 of the United States Constitution.

(g) Said section is vague and indefinite, in violation of the Fifth Amendment to the United States Constitution.

(h) Sub-sections (1) and (2) of said section are vague and indefinite and deprive plaintiff of liberty without due process of law, all in violation of the Fifth Amendment to the United States Constitution.

(i) Sub-section (3) of said section is so vague and indefinite as to permit the abridgement of plaintiff's right of lawful speech, press, assembly and association, in violation of the first Amendment to the United States Constitution.

(j) Sub-section (4) of said sec-ion unlawfully delegates legislative power to the Attorney General of the United States, his representatives, agents and employees, in violation of Article I, § I of the United States Constitution.

3. Whether Rule 242.3(c) of the Immigration and Nationality Regulations [8 C.F.R. § 242.3(c)] is unconstitutional, void and illegal in that:

(a) Said rule unlawfully redelegates legislative power to the defendant, his representatives, agents and employees in violation of Article I, § 1 of the United States Constitution.

(b) Said section delegates rule-making power to the defendant, unwarranted by and in violation of the provisions of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. § 1252(d)].

[fol. 585] 4. Whether the "Orders of Supervision" issued to each of the plaintiffs herein allegedly under the authority of Section 242(d) of the Immigration and Nationality Act of

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1952 [8 U. S. C. A. § 1252(d)] and Section 242.3(c) of the Immigration and Nationality Regulations [8 C. F. R. 242.3(c)] are unconstitutional, invalid and void in that:

(a) Said orders and certain sections thereof are unlawful exercise of legislative power by the Attorney General of the United States and the defendant herein in violation of Article I, § 1 of the United States Constitution.

(b) Said orders and certain sections thereof deprive the plaintiffs of liberty and property and impose punishment upon them without due process of law in violation of the Fifth and Eighth Amendments to the United States Constitution.

(c) Said orders and certain sections thereof deprive the plaintiffs of freedom of speech, press and association in violation of the First Amendment to the United States Constitution.

(d) Said orders and certain sections thereof are vague and indefinite in violation of the First and Fifth Amendments to the United States Constitution.

(e) Said orders and certain sections thereof are unauthorized by and in violation of Section 242(d) of the Immigration and Nationality Act of 1952 [8 U. S. C. A. § 1252(d)].

(f) Said orders bear no reasonable relation to a lawful exercise of the power to deport or to the eventual deportation of the plaintiffs and are unreasonable, harsh, punitive and an abusive use of the defendant's power.

Dated: December 6, 1954

Blanch Freedman & Gloria Agrin, By Blanch Freedman, Attorneys for the Plaintiffs, Office & P. O. Address: 220 Broadway, Borough of Manhattan, New York 38, N. Y.

[fol. 586] Proof of Service

I, Blanch Freedman, one of the attorneys for the plaintiffs, appellants herein, and a member of the bar of the Su-

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preme Court of the United States, hereby certify that, on the 7th day of December, 1954, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the defendant, appellee herein, as follows:

1. By leaving a copy thereof at the office of J. EDWARD LUMBARD, United States Attorney for the Southern District of New York, at Room 311, Federal Courthouse, Foley Square, New York City, New York, and by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C.

Blanch Freedman, Attorney for Plaintiffs, Office & P. O. Address: 220 Broadway, New York, N. Y.

[fol. 587] [File endorsement omitted]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. No. 93-285
93-286
93-287
93-288
93-289
93-290
93-291
93-292
93-293
93-294
93-228

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUZMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Geiser, Martin Young, Boris Sklar, Plaintiffs

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

Civ. No. 87- 98
87- 99
87-124

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant.

ORDER DIRECTING SUBMISSION OF ORIGINAL PAPERS—Jan. 7, 1955

At New York, New York, in said District on the 7th day of January, 1955.

Upon the annexed affidavit of Blanch Freedman duly

sworn to on the 6th day of January, 1955, upon the notice of appeal dated December 7, 1954, served and filed herein by the plaintiffs-appellants above named and upon all the papers and proceeding had herein,

[fol. 588] Now, upon motion of Blanch Freedman & Gloria Agrin, attorneys for plaintiffs-appellants, it is hereby

ORDERED, that the Clerk of this Court is authorized and directed to transmit to the Clerk of the Supreme Court of the United States all the original papers filed in the office of the Clerk of this Court which are specified in the designation of the plaintiffs-appellants as contained in the notice of appeal dated and filed herein December 7, 1954, and it is further

ORDERED, that the said records be safely kept by the Clerk of the Supreme Court of the United States and that they be returned to the Clerk of this Court upon the conclusion of the appeal.

John F. X. McGohey, U.S.D.J.

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[fol. 589] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Civ. No. 93-285, 93-286, 93-287, 93-288, 93-289, 93-290, 93-291, 93-292, 93-293, 93-294, 93-228

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF, FELIX KUSMAN, Rose Lightcap, Ida Gottesman, Anna Taffler, Benny Saltzman, Bessie Beiser, Martin Young, Boris Sklar, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

Civ. No. 87-98, 87-99, 87-124

BETTY GANNETT, ALEXANDER BITTLEMAN, CLAUDIA JONES, Plaintiffs,

against

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service of the Port of New York, Defendant

STATE OF NEW YORK,
County of New York, ss:

BLANCH FREEDMAN, being duly sworn, deposes and says:

She is a member of the firm of Blanch Freedman & Gloria Agrin, attorneys for the plaintiffs-appellants above named. She is fully cognizant of all the facts and pro-[fol. 590] ceedings heretofore had herein and submits this affidavit in support of the annexed order for the transmission of original papers to the Clerk of the Supreme Court of the United States.

The above enumerated fourteen suits were argued and determined jointly by a statutory three-judge court of this district.

On October 11, 1954, the said court rendered its opinion and decision dismissing the complaint; judgment thereon was made and entered herein on December 1, 1954.

A notice of appeal to the Supreme Court of the United

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States was duly filed herein on December 7, 1954 in accordance with the revised rules of the said court. Since filing the said notice of appeal and designation, Mr. Justice Frankfurter, on plaintiffs-appellants' application for a stay pending appeal ruled on January 3, 1955 as follows:

> ". . . Having due regard to all the circumstances, including of course the restrictions on the free movement of these appellants, I do not think I would be warranted in exercising discretion to stay the action of appellee. However, since legal issues which do not appear to me to be frivolous call for adjudication, issues that concern restraints on liberty, I think appropriate steps should be taken whereby the case may reach our appellate docket for early argument. Unless obstacles of which I am not apprised are in the way, this appeal ought to be capable of being perfected here *by January 15, 1955*. The Government will not, I am confident, stand on its full time for making a response, and one may assume that the case will be ripe for consideration by the Conference to be held on [fol. 591] January 29, 1955. If this schedule is realized and the appeals are then set for argment, the case can be heard at the session of the Court beginning on February 28, 1955.
>
> In the light of these considerations the application for a stay pending appeal is denied." [underscoring added].

The transcript of record designated for transmission herein is necessarily voluminous because it concerns the pleadings, motion papers, affidavits and orders in fourteen actions. The precise papers are listed on pages 2 to 8 of the notice of appeal, a copy of which will be exhibited herein.

The retyping of all of these documents would be a tremendously inordinate undertaking. Indeed, deponent respectfully submits, that it would be physically impossible to perform this task within the scheduled time. Moreover, the cost therefor would be prohibitive to appellants herein.

As indicated by Mr. Justice Frankfurter, the issues

herein are not frivolous; they involve serious constitutional questions of restraints on liberty.

The Supreme Court Rules (Rule 12) allows the transmission of original records. The attorneys for appellants will cooperate and assist in every way possible in the assembling of the designated papers which they seek to have filed with the Clerk of the Supreme Court of the United States.

No previous application for the relief herein requested has heretofore been made.

Blanch Freedman.

Sworn to before me this Sixth day of January, 1955. Irving Felcher, Notary Public, State of New York, No. 24-6258400. Qualified in Kings County. Certified with Kings & N. Y. Co. Clks. & Regs. Commission Expires March 30, 1956.

[fol. 592] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 549

MICHAEL NUKK, FRANK BORICH, JOSEPH SIMINOFF ET. AL., Appellants,

vs.

EDWARD J. SHAUGHNESSY, District Director of the Third District of the Immigration and Naturalization Service, etc.

ORDER NOTING PROBABLE JURISDICTION—January 31, 1955

Appeal from the United States District Court for the Southern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

January 31, 1955.

(1207-0)